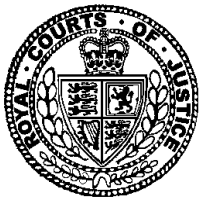

Neutral Citation Number: [2021] EWHC 2054 (Admin)

Case No: CO/2095/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/07/2021

Before:

MR JUSTICE CHAMBERLAIN

- -

Between:

TAMAS JANOS PIROSKA	**Appellant**
- and –	
APPEAL COURT IN GYULA (HUNGARY)	**Respondent**

- -
- -

MARTIN HENLEY (instructed by **Hollingsworth Edwards Solicitors**) for the **Appellant**
SAOIRSE TOWNSHEND (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing dates: 6 July 2021

- -

Approved Judgment

Mr Justice Chamberlain:

Introduction

1 The appellant, Tamas Piroska, is sought pursuant to a European Arrest Warrant ("EAW") issued by the Appeal Court in Gyula, Hungary, on 15 May 2017 and certified on 13 June 2017. The EAW seeks the appellant's extradition to serve a sentence of 2 years and 4 months' imprisonment, imposed on 1 September 2015. Of that sentence, 1 year and 10 months remain. The offences were low-value theft and misuse of vehicle licence plates.

2 Mr Piroska was arrested pursuant to the EAW on 25 July 2017 and, on the following day, he appeared at Westminster Magistrates' Court, where he was remanded in custody. On 7 December 2017, he was granted bail subject to conditions, including daily reporting to the police and an electronically monitored curfew. His extradition hearing began before DJ Baraitser ("the judge") on 20 September 2017. There were several adjournments. The hearing concluded on 11 April 2018.

3 Mr Piroska's case was that extradition would be incompatible with his rights under Articles 3 and 8 of the European Convention on Human Rights ("ECHR") and so barred by s. 21 of the Extradition Act 2003 ("the 2003 Act"). In an interim ruling on 23 January 2018, the judge held that there was a real risk of Mr Piroska being subjected to treatment contrary to Article 3 by reason of prison conditions unless an assurance was given. She therefore followed the procedure set out by the Court of Justice of the European Union ("CJEU") in Joint Cases C-404/15 and C-659/15/PPU *Criminal Proceedings against Aranyosi and Caldarau* [2016] QB 921 and made a request for further information under Article 15 of Framework Decision 2002/584/JHA ("the Framework Decision").

4 Further information, including an assurance from the Deputy Director General of the Hungarian Prison Service, was provided on 26 February 2018 and put before the judge on 11 April 2018. On the basis of that assurance, the judge was satisfied that Mr Piroska's extradition would not be incompatible with Article 3. She also considered that there would be no disproportionate interference with his Article 8 rights, nor those of his partner. She gave judgment on 28 May 2018, ordering Mr Piroska's extradition.

5 Mr Piroska appeals on both Article 3 and Article 8 grounds. Permission to appeal was refused by Cranston J on the papers on 17 September 2018 but granted by Holman J after a hearing on 25 October 2018. The appeal hearing was stayed behind *Zabolotnyi v Hungary*, which was then before the Divisional Court. That Court gave judgment on 16 April 2019 [2019] EWHC 934 (Admin). There was an appeal to the Supreme Court, in which judgment was handed down on 30 April 2021: [2021] UKSC 14, [2021] 1 WLR 2569.

Article 3

6 The background to the Article 3 complaint is the pilot judgment of the European Court of Human Rights ("ECtHR") in *Varga v Hungary* (2015) 61 EHRR 30, in which the Court held that there were widespread problems in the Hungarian prison system. In the light of that judgment, Hungary conceded that the overcrowding in the prison system was such that there was a real risk of detainees being held in conditions which breached their Article 3 rights.

7 There was then a series of further cases. At times assurances were provided; at other times, they were not. It is not necessary to rehearse the history in detail, because it has been set out in the judgment of Lord Lloyd-Jones for the Supreme Court in *Zabolotnyi*. The main question of law considered in that case was whether evidence that assurances given by Hungary to another State had been breached was admissible. The answer was "Yes". However, at [63], Lord Lloyd-Jones also considered the question of whether the Divisional Court had been entitled to conclude that the assurances relied on in that case were adequate. The answer to that question was also "Yes" and the appeal was dismissed.

8 An assurance has been provided in relation to Mr Piroska, as summarised by the judge at [21] of her decision. It confirms that Mr Piroska will be held "during transfer" at Budapest Remand Prison and thereafter at Szombatheley Prison. The accommodation at the latter has two types of shared cells, each with over 4 m^2 of space per prisoner and each equipped with a shower room, lavatory, wash basin, TV, clothes dryer, wastebasket, cleaning set, bed, table, seat and cupboard. Leisure programmes are held in well-equipped modern leisure rooms. There are separate yards for outdoor activities and a "sports course". Sport and cultural events are held in the sports hall and auditorium. The cells are properly lit, heated and ventilated. Free medical assistance is provided in an on-site medical building. Specialist medical care can be provided.

9 Mr Henley concedes, as he must, that this assurance was "detailed and specific", but says that, even in the light of the judgment in *Zabolotnyi*, the judge was wrong to regard it as adequate. This, he says, is because there was evidence that the assurance was not given in good faith or was not reliable. His point is that, by asking for an assurance in the first place, the judge implicitly accepted that the presumption that Hungary would comply with its obligations under the ECHR was displaced; and, that being so, there was no room for a presumption that the assurance was given in good faith.

10 To my mind, this conflates two separate presumptions, both flowing from the principle of mutual trust which underlies the extradition arrangements in Framework Decision. The first is the presumption that contracting States will honour their obligations under the ECHR: see *Zabolotnyi*, [33]. If that presumption is rebutted, it may be appropriate to seek a specific assurance pursuant to Article 15, as described in *Aranyosi* and subsequent cases. But once such an assurance is given, the principle of mutual trust applies again when assessing it: see *Zabolotnyi*, [34]. As noted there, the assurance is a factor which the executing state cannot disregard.

11 The judge, having given an interim ruling to the effect that first presumption was rebutted, and then giving a subsequent judgment ordering Mr Piroska's extradition, did not conflate the two presumptions. She dealt with the second presumption at [59]-[64] of her judgment where she said, by analogy with Cranston J's judgment in *Mures and the Bistrita-Nasaud Tribunal, Romania v Zagrean; Sunca v Iasa Court of Law, Romania* [2016] EWHC 2786 (Admin), that there was a "strong presumption" based on Hungary's longstanding membership of the European Union that it was both willing and able to fulfil its human rights obligations relating to those extradited from the United Kingdom. In her judgment, the evidence adduced by Mr Piroska did not "undermine the presumption that Hungary will comply with its assurance".

12 Mr Henley submits that, at this point in her judgment, the judge went wrong. At [42] of *Zabolotnyi*, it was said that – at the second stage of the analysis – the executing judicial

authority must rely on an assurance given by a judicial authority of a requesting State, at least in the absence of evidence undermining it. Where, however, the assurance is not given or endorsed by an executing judicial authority, it must simply be evaluated together with all other evidence. In other words, the court should only apply a presumption that an assurance will be complied with if the assurance has been provided or endorsed by a judicial authority. The Supreme Court in *Zabolotnyi* was doing no more than repeating the approach laid down by the CJEU in *ML* [2019] 1 WLR 1052 (see [112]-[114]) and Ms Townshend accepted that the judge had been wrong to apply a presumption to the assurance provided for Mr Piroska, which had been provided by the Hungarian Prison Service rather than the issuing judicial authority.

13 That, however, is not the end of the matter. This court may only allow an appeal under s. 27(3) of the 2003 Act if both of the conditions in subsection (3) are satisfied. Mr Henley must therefore show not only that the judge's approach to the assurance was wrong (s. 27(3)(a)), but that, had she taken the right approach, she would have been required to order Mr Piroska's discharge (s. 27(3)(b)). The right approach in this case is set out at [114] of *ML*:

> "As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority."

14 The question is therefore what would have been different had the judge looked at the assurance as part of an overall assessment of the information available to her. Mr Henley makes two, interrelated submissions. The first is that the Hungarian government has, after around twenty years of cooperation with the Hungarian Helsinki Committee ("the HHC"), excluded it from Hungarian prisons. The HHC is an independent non-governmental organisation, which has hitherto reported on prison conditions in the country. Mr Henley submits that, in its absence, there is no mechanism for monitoring compliance with the assurance provided in respect of Mr Piroska. The second submission is that the attitude shown by the Hungarian government, both in excluding the HHC from prisons and in failing consistently to provide assurances post-*Varga*, gives rise to concerns about Hungary's willingness to comply with the assurance.

15 The problem with the first submission is that, although the judge said she was applying a presumption that Hungary would comply with the assurance provided, she in fact considered whether there was a sound, objective basis for believing that the assurance will be fulfilled and whether it was capable of verification. She took into account the exclusion of the HHC from Hungarian prisons. Nonetheless, she was satisfied that the assurance was capable of being monitored by other organisations identified by the issuing judicial authority, namely public prosecutors, penitentiary judges, the Commissioner for the Protection of Fundamental Rights and the National Preventative Mechanism. Further, she noted that the assurance for Mr Piroska provides a specific guarantee of access to members of the consular staff of the UK in Hungary who will be able to visit him and inspect the conditions of his detention ([66]-[68]).

16 As to the second submission, I do not accept that a failure consistently to provide assurances since the pilot judgment in *Varga* demonstrates bad faith on the part of the Hungarian authorities, such as to cast doubt on their willingness to comply with assurances given. Mr

Henley referred to the further information provided by the Hungarian authorities in May 2017, which was summarised by the judge as follows:

(a) The Hungarian Parliament had adopted new legislation concerning detention conditions which may be capable of redressing the grievances of prisoners.

(b) The European Court of Human Rights ("the ECtHR") had suspended its examination of applications relating to conditions of detention [in] Hungary until 17 August 2017 because of the new legislation.

(c) In addition to legislative changes, renovation expansion and building of new prisons have been in progress. Since the judgment in *Varga* more than 1000 new prison places had been created.

17 The Hungarian Ministry of Justice concluded that, according to the objective, reliable, specific and properly updated evidence, there were no substantial grounds for believing that there were deficiencies within the Hungarian prison system which reached the threshold of inhuman or degrading treatment as interpreted by the case law of the ECtHR. Consequently, on the basis of mutual recognition and mutual trust, there were no substantial grounds for requesting prison assurances.

18 I do not accept the matters relied upon by Mr Henley and considered by the judge demonstrate an "aggressive and difficult stance" on the part of the Hungarian authorities. The stance was taken following the Strasbourg Court's judgment in *Domjan v Hungary* (App No. 5433/17) in which it held that Hungary had introduced "a combination of remedies, both preventive and compensatory in nature, guaranteeing in principle genuine redress for Convention violations originating in prison overcrowding and other unsuitable conditions of detention in Hungary". Mr Henley noted that Hungary is a country which provides individualised assurances in every case. This is, no doubt, a resource-intensive exercise which the Hungarian authorities will not undertake unless necessary. In my judgment, a decision to cease providing assurances in the belief that, following *Domjan*, they were no longer required, does not evidence bad faith. I am fortified in this conclusion by the fact that, following her interim ruling on 23 January 2018, in which the judge said that she considered an assurance was necessary, one was provided.

19 As mentioned above, Mr Henley concedes that, if the assurance is reliable, that settles the question on Article 3. As is evident from [55] of her judgment, the judge considered Mr Henley's arguments about reliability and dismissed them. Having considered these arguments again myself, the only possible conclusion is that assurance is reliable. The judge's erroneous application of a presumption therefore does not matter.

20 The submission originally made that I should make a reference to the European Court of Justice was not pursued at the hearing. Even if Mr Henley had been able to identify a provision enabling the court to make such a reference in this case, there is nothing to refer. *Zabolotnyi* states the law as declared in *ML*. Mr Henley's case was concerned with the judge's conclusion on matters of fact, not law.

21 I therefore dismiss this ground of appeal.

Article 8

22 The judge dealt with the Article 8 argument at [69] to [81] of her judgment. She conducted a "balancing exercise" as required by *Celinski and others v Polish Judicial Authorities* [2015] EWHC 1274 (Admin). She set out the following as factors in favour of extradition:

- The weighty requirement on the UK to fulfil obligations under the EAW scheme.
- Mutual confidence and respect for the decisions of the Judicial Authority;
- Mr Piroska placed himself beyond the reaches of the Hungarian justice system in the knowledge that he had been sentenced to immediate imprisonment. It was not open to him to assume the decision would be overturned on appeal. There is a need to ensure that there are no 'safe havens' to which a criminal can flee in the belief that they will not be sent back to the country in which they committed their offences;
- The offences were sufficiently serious as to have attracted significant prison sentences in Hungary, most of which remains to be served;
- Mr Piroska currently has no dependent children although his partner is expecting their first child in September 2018;
- Ms Jaczko [Mr Piroska's partner] is currently working on a salaried basis. She may receive maternity benefits through her employment. If she does not the State is likely to provide benefits appropriate to a single parent;
- Ms Jaczko has long standing friends who live in the UK;
- Ms Jaczko has a property in Hungary left to her by her father. She moved to the UK relatively recently in February 2016. Her ties in this jurisdiction are not so strong as to prevent her returning to Hungary for a period;
- Ms Jaczko has no physical or mental health issues;
- Mr Piroska tells me he has a diagnosis of Hepatitis C. There is no reason to believe he will not receive appropriate treatment in custody in Hungary.

23 She out the following as factors against extradition:

- Mr Piroska has been in the UK since February 2016. He has worked both before and after his remand into custody and has supported himself and his partner
- Mr Piroska's partner is expecting their first child in September. She will be without his emotional, financial and practical support if he is extradited;
- His newborn baby will be without his or her father for a period;
- Extradition and consequent separation will likely cause emotional harm to Mr. Piroska and his partner;
- Mr Piroska has no convictions in the UK and has [led] a law-abiding life here.

24 In his skeleton argument, Mr Henley says that the judge was wrong to look just at the sentence when deciding that the offending was "serious". He submits that the offending is a collection of small-scale thefts from corporate bodies, the total loss caused being only £717. Mr Henley also relies on the lengthy period of time which has elapsed since the extradition proceedings began, highlighting that Mr Piroska has served four months of his sentence on remand in the United Kingdom and has spent three and a half years on conditional bail with onerous conditions. He submits that, in light of the time that has passed since the judge gave her judgment, I ought to re-conduct the *Celinski* balancing exercise myself.

25 Ms Townshend does not seek to dissuade me from carrying out the balancing exercise afresh but submits that it will make no difference. That being the case, I admit into evidence Mr

Piroska's new proof of evidence dated 28 June 2021. The proof includes the following material points:

- Mr Piroska is still with his partner. They have now been together for six and a half years. They came to the United Kingdom together five and a half years ago;
- They have a son together who has born in the United Kingdom. He is now two and a half years old;
- Mr Piroska has been working for a car cleaning company for around three and a half years. He is the breadwinner for his family as his partner stays home to look after their son;
- If Mr Piroska is extradited, his partner would not return to Hungary. She would not be able to afford to visit him and doing so would also be difficult due to the coronavirus pandemic;
- Mr Piroska was granted EU Settled Status in April 2021;
- Mr Piroska and his partner "sold everything to move to the UK".

26 In light of the time that has passed since the judge ordered Mr Piroska's extradition, and in the absence of any resistance from the respondent, I accept that it is appropriate for me to take into account the material changes in Mr Piroska's circumstances. However, I remind myself that this is an appeal against the judge's decision to order Mr Piroska's extradition, the judge having considered all the evidence that was available at the extradition hearing. This court's powers on appeal are not unbounded; they are set out in s. 27 of the 2003 Act.

27 As to Mr Henley's first submission, regarding the seriousness of the offence, this is an attack on the judge's reasoning which is not affected by the passage of time. Section 27(3) requires me to consider whether the judge ought to have decided the issue differently. Her reasons for considering that the offending was serious are at [75] of her judgment. She took account not only of the significant sentence imposed, but also of the following aggravating features: the offending took place over a significant period (January 2013 to October 2013); there was evidence of planning; twenty-one offences were committed; Mr Piroska has previous convictions for offences which pre-dated the offending. The judge's reasoning on this issue is, in my judgment, unimpeachable.

28 As to Mr Henley's second submission, the changes to Mr Piroska's circumstances are set out in his new proof. As I am considering evidence that was not available at the extradition hearing, s. 27(4) applies. I need to consider whether, had the new evidence been before the judge, she would have decided the Article 8 issue differently. Rather than re-conduct the balancing exercise myself, I start with the judge's factors, with substitutions and amendments to take account of the updated proof. Where no updated information has been provided, I repeat the factors set out by the judge.

29 Taking this approach, the factors in favour of extradition are:

- The constant and weighty public interest in extradition: that people convicted of crimes should serve their sentences and that the United Kingdom should honour its treaty obligations to other countries. This public interest diminishes with delay;
- Mutual confidence and respect for the decisions of the Judicial Authority;
- Mr Piroska's status as a fugitive and the public interest in ensuring that there are no "safe havens" to which criminals can flee in the belief that they will not be sent back;
- The fact that the offending was serious. The offences attracted a significant prison sentence in Hungary, much of which remains to be served (at the time of the

extradition hearing there were 2 years, 2 months and 12 days remaining; there is now 1 year and 10 months remaining);
- Mr Piroska's partner has long-standing friends who live in the UK;
- Mr Piroska's partner has no physical or mental health issues;
- To the extent that Mr Piroska is still affected by Hepatitis C, there is no reason to believe that he would be unable to receive appropriate treatment in Hungary.

30 The factors against extradition are:
- Mr Piroska and his partner have a two-year-old son who was born in the United Kingdom; His partner and son will be without his emotional, financial and practical support if he is extradited;
- Mr Piroska's partner is not currently working as she stays at home to look after the child;
- Mr Piroska's son will be without his father for a period of time;
- Extradition and consequent separation will likely cause emotional harm to Mr. Piroska, his partner and their child;
- Mr. Piroska has no convictions in the United Kingdom;
- He has spent a period of four months in custody on remand in the United Kingdom. He has spent nearly four years on conditional bail with an electronically monitored curfew from midnight to 3am and a requirement to report daily to the police.

31 The birth of Mr Piroska's son is a significant change in circumstances since the judge's balancing exercise was undertaken. In conducting such an exercise, the best interests of children are a primary consideration, albeit not paramount. Nonetheless, even taking account of the interests of Mr Piroska's son, I do not consider that the judge ought to have reached a different conclusion on Article 8. Mr Piroska is not the sole or primary carer for his son. If he is extradited, his partner, who is the primary carer, will continue to live in the United Kingdom. Although Mr Piroska's partner currently does not work, no issue was taken with the judge's finding that she will be entitled to benefits. Mr Piroska's extradition will undoubtedly cause emotional and financial difficulties for his partner and his son, but that is an unfortunate and routine consequence of extradition.

32 Whilst the passage of time reduces, to some extent, the public interest in favour of extradition, it does not diminish it entirely. As I have said, I do not consider that the judge was wrong to find that the offending was serious. Despite the time spent in custody in the United Kingdom, Mr Piroska is a fugitive who still has a significant prison sentence to serve in Hungary. Whilst I accept that his liberty has been curtailed during his time spent on electronically monitored curfew throughout these proceedings, the curfew hours were not particularly onerous. This is not one of the rare cases in which Article 8 rights outweigh the public interest in extradition, notwithstanding the passage of time.

Conclusion

33 Accordingly, the appeal is dismissed.