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

Royal Courts of Justice
Strand, London, WC2A 2LL

Friday 29th July 2022

Before :
MR JUSTICE FORDHAM

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Between:

(1) CSABA NEMETH (2) MARIA LAKATOS (3) MARIA HORVATH	**Requested Persons**
- and -	
HUNGARIAN JUDICIAL AUTHORITIES	**Requesting State**

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Mary Westcott (instructed by Lawrence & Co) for **Csaba Nemeth**
Amelia Nice (instructed by Lawrence & Co) for **Maria Lakatos**
Louisa Collins (instructed by Hodge Jones & Allen) for **Maria Horvath** (in writing)
Amanda Bostock and Hannah Burton (instructed by CPS) for the **Requesting State**

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Hearing date: 29/7/22
Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment in a remote hearing.

MR JUSTICE FORDHAM:

Introduction

1. I have given four previous judgments in these cases. They are: First Judgment [2021] EWHC 3366 (Admin) (9 December 2021); Second Judgment [2022] EWHC 224 (Admin) (3 February 2022); Third Judgment [2022] EWHC 273 (Admin) (10 February 2022); and Fourth Judgment [2022] EWHC 1024 (Admin) (4 May 2022). The Bogdan v Hungary CO/3601/2021 lead case, heard on 29 March 2022, has now been determined, adversely to the requested person in that case: see [2022] EWHC 1149 (Admin) (Julian Knowles J, 18 May 2022). It is therefore appropriate to return to the Bogdan issue which I stayed in these cases (First Judgment §3). In accordance with directions that I had earlier made, the parties filed their written submissions on how the section 2/Article 6 issue should be determined in light of the judgment in Bogdan. Having read and considered those submissions, I made an order adjourning these applications for permission to appeal on this issue into open court. I have been assisted by the written submissions, by the materials relied on, and by detailed oral arguments on behalf of the requested persons made at this hearing. This was a remote hearing by MS Teams. Counsel were satisfied, as was I, that the mode of hearing involved no prejudice to the interests of their clients. Maria Horvath's team confirmed that they were satisfied that the section 2/Article 6 arguments could properly be advanced by Ms Westcott and Ms Nice, in the absence of Ms Collins who had been a co-signatory to the skeleton argument for this hearing. The open justice principle was secured through the publication of the case, its start time and its mode of hearing in the cause list, together with the usual email address usable by any member of the press or public who wished to observe the public hearing. The essence of the argument on behalf of the requested persons is that it is reasonably arguable that the evidence related to erosion of the rule of law and of judicial independence in Hungary, considered against the specific context and circumstances of the present cases, mean that (a) the Extradition Arrest Warrants in the present cases have not been issued by a "judicial authority" (section 2) or alternatively that (b) there is a real risk of a flagrant breach of the right to a fair trial in breach of Article 6 (or Article 5, given the prospect of imprisonment as a consequence). The approach in law is discussed in Wozniak v Poland [2021] EWHC 2557 (Admin).

"Flagrant"

2. A first question of law which arose in particular out of the oral submissions made today relates to the word "flagrant". Ms Westcott drew my attention as the principled framework for the 'two-stage test' which arises in relation to the issue to the Luxembourg Court's judgment in L & P (C-354/20 PPU and C-412/20 PPU, 17 December 2020) [2021] 2 CMLR 24 and in particular to §61, quoted in Bogdan at §23. She emphasised in the light of submissions she made about 'summaries' of the two-stage test – in particular by one of the district judges who dealt with these cases in the courts below – the importance of recognising and applying the entirety of the relevant passage from L & P §61. It describes the second step as follows:

> ***… to assess … whether, having regard to the personal situation of the person whose surrender is requested by the European arrest warrant concerned, the nature of the offence for which he or she is being prosecuted and the factual context in which the arrest warrant was issued, such as statements by public authorities which are liable to interfere with the way in which an individual case is handled, and having regard to information which may have been communicated to it by the issuing judicial authority pursuant to Article 15(2) of [the EAW***

> ***Framework Decision], there are substantial grounds for believing that that person will run a real risk of breach of his or her right to a fair hearing once he or she has been surrendered to the issuing Member State.***

One of the features of that passage is that the word "flagrant" does not appear within it. Ms Westcott accepted, however, that in substance the same considerations inform the section 2 independence (judicial authority) analysis as inform the Article 6 (and 5) "flagrant breach" analysis. She accepted that there is a convergence in the analytical framework derived from the Luxembourg and Strasbourg Courts, albeit that it is the Strasbourg Court whose jurisprudence uses the word "flagrant". She properly invited my attention to the passages in the Wozniak judgment where this point was debated, including at §52 where the Court records the requesting state authority's response as to whether there was a material difference. Ms Westcott also very fairly drew my attention to §184 in the judgment in Wozniak. There, the PQBD and Julian Knowles J explained that it is indeed the same concept of the real risk of a "flagrant" denial of justice which is in play in the context of the two linked section 2 and Article 6 arguments. Ms Westcott, on reflection, accepted that. In my judgment, beyond argument, she was right to do so. What that means, as Ms Westcott also accepted, is that really the central question on the proper application of the two-stage process – correctly approached – is to consider whether there are substantial grounds for believing that there is a real risk that the requested persons in these cases would face a flagrant denial of their fair hearing or fair trial rights.

Stage 2 and the 'exclusion' of generic/systemic aspects

3. A second point of principle arose and was helpfully teased out by the oral submissions made at the hearing today. Although Ms Westcott and Ms Nice put this point at the end of their oral submissions in my judgment it would be appropriate to address it at the outset. The question is whether the 'generic' and 'systemic' materials and concerns which inform the Stage 1 question somehow cease to be relevant when a Court arrives at Stage 2. Stage 1 as it was summarised by Julian Knowles J in Bogdan §21 focuses on:

> ***… evidence of systemic or generalised deficiencies concerning the independence of the judiciary in the Member State that issues that arrest warrant which existed at the time of issue of that warrant or which arose after that issue …***

There are other descriptions of that first stage including L & P at §59 which Julian Knowles J went on to quote in Bogdan at §23.

4. Ultimately, Ms Westcott's submission was that the argument she advanced in relation to the 'general' and the 'specific' and the two-staged approach – linked to the question of requesting further information from the requesting state – warrants the grant of permission to appeal for the same reasons as were discussed at Bogdan §§68-76. That reasoning discusses whether a point of principle could justify the grant of permission to appeal by this Court, for the purposes of potentially accessing the Supreme Court. Ms Westcott emphasises the phrase at Bogdan §75 where Julian Knowles J referred to the situation "where there is a body of material casting doubt over the correctness of otherwise binding authority and convincingly suggesting that a higher court might correct the position."

5. The essence of the argument went as follows. The domestic case law has gone off the rails. It is clear from L & P that the Luxembourg court at §61 was contemplating that the

'general' materials and concerns, related to generalised and systemic matters, would be part of the factual and evidential matrix informing the assessment of the 'specific' Stage 2 question regarding the position of the individual requested person or requested persons. On that basis, goes the argument, the Stage 2 analysis cannot properly 'exclude' the nature of the concerns and the relevant materials that have informed Stage 1. As I put to Ms Westcott in argument, and she embraced, the stronger the relevant 'general' material in relation to Stage 1 the shorter the step may need to be for an individual requested person at the 'specific' Stage 2. Ms Westcott and Ms Nice submit that where things have gone wrong is in the domestic case law, or at least the understanding of that case law. They rely on Wozniak §200 where the Divisional Court said:

> ***… we are satisfied that it is not permissible to extrapolate from the general situation in Poland and the systemic threats to independence identified in the material we have set out, serious though they are, that there is specific and real risk of breach of the appellants' fundamental right to a fair trial, so as to make it unnecessary to carry out a specific and precise assessment on the facts of their particular cases. In other words, it is still necessary … to make an assessment that: '… [has] regard to his personal situation, as well as to the nature of the offence for which he is being prosecuted and the factual context that form the basis of the European arrest warrant.'***

Ms Westcott and Ms Nice also drew my attention to Bogdan itself at §§43-44 and the discussion there of the district judge's approach in that case. They also point to the written skeleton argument of the Respondent in the present case. All of that, they submitted, reflects an impermissible 'exclusion' of the 'general' concerns and material relevant at Stage 1 and an inappropriate 'exclusion' at the 'specific' Stage 2 of those 'general' matters. The point is not only an important point of principle, they say, but it is of particular importance in what they say is the "unique" situation in Hungary involving what they submitted is a defiant non-compliance with rule of law requirements and the complete absence of any progress in that regard, all of which is taken from the 'generic' and 'systemic' materials.

6. In my judgment, although this is clearly an important point of principle there is a very clear answer to it. In my judgment it is clear, beyond argument, that Ms Westcott and Ms Nice are quite right to identify as relevant in principle to the 'specific' Stage 2, the 'general' considerations and materials that have informed the conclusion on Stage 1. It would not be right to forget the matters relating to the 'generic' or 'systemic'. Those 'general' matters could be highly material when considering the 'specific' implications for a requested person (Stage 2). The strength of those 'general' materials and the weight to be attributed to them could also, in principle, be highly relevant in considering the 'specific' implications for an individual. In considering the circumstances of the individual (Stage 2), therefore, it is wrong to begin from a 'neutral' starting point; and right to start from an 'informed' one. But in my judgment, it is not reasonably arguable that anything in any of the domestic case law has gone off these rails, still less in a way that would be binding, so as to require the trap to be sprung only by an appeal to the Supreme Court. The point that the Divisional Court was making at Wozniak §200 was a point about the permissibility of 'extrapolating' from an answer at 'general' Stage 1 straight to an answer at 'specific' Stage 2. The point being made is that you cannot 'bypass' Stage 2, simply by reference to 'general' and 'systemic' matters. Stage 2 is a necessary stage, and "regard" has to be had to the requested person's "personal situation". But the Divisional Court was not saying, in that passage, that the materials or conclusions or the weight or the implications of the matters which are 'generic' and 'systemic' are to be 'excluded' or 'forgotten about' at Stage 2. Nor for that matter was the district judge whose judgment was being discussed by Julian Knowles J in Bogdan §§43-44. At §43

the reference was to a specific and precise "impact" of any issues with judicial independence "in so far as they exist". That is making the obvious point that the starting point for considering the "impact" and implications for the individual is to remember what has been found at the generic Stage 1. At §44 the analysis is about whether the systemic rule of law problem within Hungary could "impact" on the applicant's specific case. Consideration of whether matters "impact" on an individual case obviously involves looking at what those matters are, remembering what they are, and applying them to the individual circumstances. It plainly does not involve putting them to one side or 'excluding' them. In my judgment, the same point can be seen in the skeleton argument of the Respondent for this hearing. In the passage that is specifically relied on, the point is made by Ms Bostock and Ms Burton that a specific and precise assessment of fact is required to establish "whether the systemic issues will actually affect" the individual case. That is itself a recognition that one is taking the relevant material on conclusions from Stage 1 ("the systemic issues") and, far from excluding it or forgetting about it, is addressing the circumstances of the individual case in the light of those matters. I asked for confirmation and received it: it is not the Respondent's position in these proceedings that those matters are 'excluded' at Stage 2 (nor that there is any binding Divisional Court or High Court or other authority which has that effect). In my judgment, the position is clear. I have approached this case on the basis that the Stage 1 considerations, their implications and their weight, would in principle be relevant when the Court comes to consider Stage 2.

The mainstream issue

7. After having dealt with those two preliminary points, I can return to the mainstream arguments on the section 2/Article 6 issue in the present case. I have explained two key points previously (Second Judgment §8). First, that the arguments in Bogdan were about what constitutes a 'judicial authority' for the purposes of section 2 of the 2003 Act. Secondly, that the interrelationship between independence of the 'judicial authority' for the purposes of section 2 in a conviction warrant case like Bogdan, and Article 6 ECHR in accusation warrant cases like the present cases, was illustrated by and lay behind the order I had made to stay the section 2/Article 6 issue raised in these cases.

This is a distinct issue

8. I made clear at this hearing that I was minded to proceed on the basis – in the requested persons favour – that the Article 6 (and Article 5) "real risk of a flagrant breach" arguments with which I am now dealing are distinct from the Article 6 (and Article 5) "real risk of a flagrant breach" argument which I addressed in the Fourth Judgment at §§6-10. That was an argument about "endemic delays". I did not give Ms Bostock or Ms Burton the opportunity to address me in relation to that point and I do not need to do so. I am quite satisfied, even making that favourable assumption and adopting it as a premise in the requested persons favour that – for the reasons to which I will come – there is no reasonably arguable section 2/Article 6 ground of appeal in this case. It follows that any progress that Ms Bostock or Ms Burton might have made, on seeking to persuade me that I had somehow already made relevant findings to an earlier stage in these proceedings, could not be a matter of any materiality. I make clear: I have proceeded on the basis that no earlier finding in relation to an earlier matter does bite on the issue with which I am now dealing; and that I have considered the issue unencumbered by any baggage.

Cases, materials and 'fresh evidence'

9. So far as authorities are concerned, the arguments have focused on the Bogdan judgment and the predecessor trilogy which I had listed (Fourth Judgment §3) under a heading "Section 2(2) Independence". That trilogy was: Lis, Lange and Chimielewski v Poland (No. 1) [2018] EWHC 2848 (Admin); Wozniak; and L & P. I have already referred to Wozniak and L & P, as well as Bogdan. So far as materials are concerned, I re-encountered for this issue some of the materials which I mentioned previously: see Fourth Judgment §2. Other materials are more recent. Various materials were not before the district judges who decided these cases in the magistrates' court. They are put forward as putative "fresh material". I have read and heard some submissions about 'errors' which the district judges are said, at least arguably, to have made in the approach that they took to the materials that were before them. I made clear that I was minded to posit this Court considering the 'two-stage test' for itself, on the basis of all of the materials now before the Court, in order to consider whether the outcome of the decisions of the district judges below was 'wrong'. Again, this is a point most favourable to the requested persons and I did not, in the circumstances, hear submissions from the Respondent about it. Again, I make clear that that is the basis on which I have considered the arguments put forward in favour of permission to appeal.

10. I return to the materials themselves (Fourth Judgment §2). As to the Supervision of ECtHR Decisions, there is the supervision of the judgment in Baka (20261/12) (judicial independence etc), as to which I was shown a recent Interim Resolution (9 March 2022) of the Committee of Ministers' Deputies. Ms Westcott invited my attention by way of 'filling in a gap' earlier materials regarding the supervision of the Baka judgment. What I derived from the passages which she asked me to consider was an important point being made by NGOs, following a Hungarian action report of 25 June 2020, relating to the "chilling effect" (as it was being described) so far as concerns the Hungarian court system and the position of Hungarian judges. On looking carefully at that material, the specific point that was being made related to the "chilling effect" of the Article 10 violation which the Strasbourg court had found in Baka, and the "chilling effect" of all of that for the "freedom of expression" of judges in Hungary. That material is a bridge which gives me context in relation to the Interim Resolution of March 2022. There, the point is emphasised that the Baka case and the fallout subsequent to it were exerting a "chilling effect" on other judges. And there, in the context of "great concern" about the continuing lack of progress in the supervision of the Baka judgment and in the promulgation and implementation of measures necessary in order to address the concerns arising out of "the violation found" in that judgment, is the reference urging steps to be taken that would enable a full assessment as to whether concerns have been dispelled regarding the "chilling effect" on the "freedom of expression" of judges caused by "the violations" in these cases. I have had regard to the content of those materials, and indeed the content of all of the materials that have been put before me, as emphasised in the written and oral arguments before me. As to the European Parliament, I was reminded of the Resolution (12 September 2018); and was shown the more recent Resolution of 10 March 2022. As to the United Nations, I was reminded of the UN Committee on the Elimination of Racial Discrimination, concluding observations (6 June 2019); the Compilation Report on Hungary of the OHCHR (25 August 2021). I was able to remind myself of the HHC & Amnesty International Timeline on undermining of the independence of the judiciary 2012-2019. I was shown the recent HHC Update (5 May 2022) on 'state of danger' arrangements. As to the General Ombudsman, I was reminded of the Venice Commission opinion (18 October 2021) on 'downgrading' (Fourth Judgment §13ii); and was shown

the more recent Sub-Committee Report (25 March 2022). I was also reminded of the expert evidence of Dr Csire (Second Judgment §§6, 9; Fourth Judgment §9(vi)).

Stage 1

11. A key point made on behalf of the requested persons is that this Court should proceed on the basis that Stage 1 (described, inter alia, in Wozniak at §165) is satisfied on the generic and systemic evidence. There is evidence of systemic or generalised deficiencies concerning the independence of the judiciary (Bogdan §21). Stage 1 was treated in Bogdan as being, at least arguably, satisfied in light of all of the material considered in that case, and in particular the serious step taken in September 2018 through the proposal of the European Parliament (it was later acknowledged by and agreed with by the EU Commission): see Bogdan §§64-65. It was accepted in the Respondent's skeleton argument that it was appropriate for this Court to proceed for the purposes of today's hearing on that basis. I am satisfied that this is the correct course, justified by the general and systemic materials and the concerns which they identify. I proceed on the basis that it is reasonably arguable that the analysis does proceed to Stage 2, and this Court at a substantive appeal hearing would need to do so.

Bogdan is a conviction EAW case

12. Another key point made on behalf of the requested persons is that Bogdan was a 'conviction' case and only dealt with the position in conviction cases. Put simply, the argument is that Bogdan was a Hungarian Wozniak (conviction case) which lacked its joined Hungarian Chlabicz (accusation case). That means, so goes the argument, that the judgment in Bogdan is restricted and is distinguishable. Emphasis is placed on the line of argument adopted by the Hungarian judicial authority itself through Counsel in Bogdan (§60), with its 'there will be no trial in this case' shortcut answer, and its description of Bogdan as a questionable 'lead case', when a "better case" to "test the merits" of the argument would have been an accusation case where the requested person "stands to face a trial", as is this case. Emphasis is placed on Bogdan §67 where Julian Knowles J said that Article 6 was inapplicable, because the requested person in Bogdan "would not face trial". That point was made within §226 of the district judge's judgment in that case, quoted in Bogdan at §66. The present cases are (almost in their entirety) accusation warrant cases. The question therefore arises as to whether the analysis in Bogdan provides the answer for 'accusation' warrant cases. If not, the question is whether permission to appeal should be granted in these cases in order to provide an authoritative and determinative answer. I emphasise that Bogdan was itself a judgment on permission to appeal, but where I am quite sure that it is appropriate for that judgment to have been cited and relied on and considered.

13. I cannot accept that the analysis Bogdan is, even arguably, distinguishable on the basis that it is a 'conviction' warrant case. Julian Knowles J was very well aware, and recorded, in Bogdan that that case had been selected as "the lead case for the purposes of the section 2/Article 6 Wozniak arguments": see Bogdan §26. He also recorded that position and the fact that other Hungarian extradition cases had been stayed pending the outcome of that case. He clearly did, in my judgment, "test the merits" of the argument. The substance of what was considered in Bogdan mirrored Wozniak, and they were intended to be read in parallel, as he specifically said (Bogdan §9). In Wozniak the conviction case (Wozniak) and the accusation case (Chlabicz) had been selected as test cases for consideration side-by-side. The substance of the judgment in Bogdan emphasises the importance of the

Stage 2 test of the "specific and precise verification" taking into account the requested person's "personal situation", the "nature of the offence in question" and "the factual context in which the warrant was issued": Bogdan §21. The principle from Wozniak was adopted: that it was not sufficient for requested persons to point (and extrapolate) to "serious and profound, but general, structural deficiencies and evidence of objective impairments to fair decision-making" (Bogdan §24). The materials relating to developments in Hungary including after the EU Parliament Resolution of 12 September 2018 were considered at the hearing in Bogdan. That hearing took place on 29 March 2022. The critical point was that the material, although it could arguably satisfy Stage 1, could not arguably satisfy Stage 2. The critical point was that there were Stage 2 "difficulties" that arose on the basis of all of the materials that were being put forward. As it had been put in Wozniak at §200 (Bogdan §24) and as I have explained, it was "not permissible to extrapolate" a favourable Stage 2 answer from "the general situation and systemic threats to independence identified in the material, serious though they were". So, Julian Knowles J in Bogdan identified Stage 2 as presenting "the difficulties" for the requested person. In a passage from which he quoted (Bogdan §66), the district judge in Bogdan had made the point that the requested person had already been convicted. But Julian Knowles J did not stop at that. He went on (also at Bogdan §66) to quote a later passage from that district judge's judgment. In that later passage the district judge had specifically held that he did not accept, having regard to the evidence including expert evidence, "that the evidence pointing to generalised systemic problems could also demonstrate a real risk to every defendant, or every person extradited". In my judgment, it is very clear that the reasoning and conclusion in Bogdan was excluding as unarguable that the generic, or general, or systemic country material analysis as to Hungarian rule of law or independence issues could, of themselves, support a favourable conclusion on the part of a requested person in relation to section 2 or Article 6.

14. The reasoning is to be read across to 'accusation' cases. Bogdan was Hungary's Wozniak. It must equally be fatal to any "general or generic or systemic" arguments, based on that material, in the context of Article 6, accusation warrants and trials. More is needed. What is needed is material which supports a 'specific' point relating to the case of the requested person, or requested persons, albeit (as I have explained) all read and considered in the light of the Stage 1 'general, systemic and generic evidence'.

Stage 2: the 'specific' position in these cases

15. I can turn finally to the all-important Stage 2. The question is whether the parameters, facts and circumstances of the present case give rise to a reasonably arguable contention as a "specific and precise assessment", of the facts of these particular cases, in light of the nature of the offences in question and the factual context in which the warrants were issued, and in light of the general material relevant to Stage 1, that the requested persons face a "real risk" of a "flagrant breach" of Article 6 fair trial rights if extradited. In my judgment it is not reasonably arguable that they do.

16. One theme which I have considered, with the assistance of Ms Westcott, Ms Nice and the written submissions and materials to which they have referenced is the position of the requested persons as individuals of Roma ethnicity. That was the topic with which I dealt – but in the context of endemic delays – in the Fourth Judgment §§9-10. As I explained, passages in the Annex to the EU Parliament's 2018 Resolution relate to rights of persons belonging to minorities including Roma. Those passages describe the discriminatory ill-treatment faced by Roma (Fourth Judgment §9(i)). I was able to revisit

those passages with Ms Westcott for the purposes of the argument with which I am now dealing. She accepts – rightly – that the passages in that Annex do not identify in the context of discrimination against Roma any point relating to breach of fair trial rights. Those passages in that Annex do not identify as a human rights issue, for the purposes of the action that was there being taken by the EU Parliament, Article 6 breaches of fair trial rights, still less from the perspective of discriminatory treatment of individuals of Roma ethnicity. I entirely accept the relevance of considering the other material before the Court, as I have. But I cannot accept the submissions of Ms Westcott that this absence from the Annex is, in essence, an irrelevant feature of the Annex; that it was no part of the function or role of the EU Parliament to identify 'overlaps' between topics of concern which were the subject of the Annex, or to identify specific concerns such as the flagrant denial of fair trial rights to individuals of Roma ethnicity. What the EU Parliament was doing was considering the "values" on which the EU was founded and the relevant and applicable human rights standards. What it was doing was considering the existence of a "clear risk of serious breaches" by Hungary. It was considering a number of topics including "independence of the judiciary" which was discussed. And it was considering a range of "human rights", including ECHR rights, and including the rights of persons belonging to minorities including persons of Roma ethnicity. In my judgment, it was plainly a matter which would have been on the 'agenda' of the Parliament – and relevant to its function – for it to identify flagrant breaches of the Article 6 right to a fair trial and to identify breaches of that right on the part of individuals of Roma ethnicity. In my judgment it is of significance that important material – relevant to the 'specific' Stage 2 – does not identify that as being a matter of concern for the purposes of the Article 7 action being taken by the EU Parliament.

17. Ms Westcott accepted that the logic of her argument on the materials related to persons of Roma ethnicity might mean that, albeit through a case-by-case consideration of Stage 2 where the respondent Hungarian judicial authority would always be able to argue that there was no bar on extradition, any requested person would be unlikely to be extraditable to Hungary in an accusation warrant case if they were an individual of Roma ethnicity.

18. I am satisfied, beyond argument, that the materials that are before the Court relating to the picture of discrimination against individuals of Roma ethnicity within Hungary are not sufficient of itself to meet the Stage 2 test. What I do accept is the 'intersectional' nature of the characteristics to which the requested persons in these cases are able to point. The 'intersectional' point means that the materials relating to treatment of individuals of Roma ethnicity does not become irrelevant or excluded. It is part of the overall picture, as is all of the material, when I turn to consider the other features of the case on which reliance has been placed.

The headline point

19. That brings me to what, in my judgment, is really the headline point in this case. It concerns the specific features of the Hungarian authorities' prosecution, for the alleged index offences, of the group of defendants who are facing trial, including these requested persons.

20. In their helpful skeleton argument, Ms Westcott, Ms Nice and Ms Collins provided me with a list of specific concerns which they say flow from the nature of the case intended to be prosecuted in Hungary. They refer to the following features. The Roma ethnicity of the requested persons as defendants at the trial, as being among the most vulnerable in

Hungarian society. The prosecution as relating to an alleged organised criminal group allegedly led by these Roma defendants, a population more vulnerable to discrimination. The press coverage, increasing the risk of undue pressure. The cases being more likely eventually to be elevated to the more senior courts where there is a greater risk of influence on independence of the relevant judiciary. The fact that the requested persons themselves have repeatedly and jointly asserted that they will be treated unjustly if extradited. Those claims alone will mark them out for unfavourable attention. The arguably lower effectiveness of possible remedies of protection in the event of experiencing any bias or procedural impropriety, or any perception of bias or procedural impropriety, because of the unattractive nature of the cases. The fact that the ombudsman would have less of an appetite to confront the government in these cases. These matters are at the forefront of the consideration of all the circumstances for Stage 2. Emphasis is also placed on the "paramount importance" which the Hungarian prosecuting authorities have attributed to these cases; the "high profile" nature of the intended prosecution; and the "leadership roles" which the requested persons are said by the Hungarian prosecutors to have had. I was reminded of the description in the materials of the "200 elderly victims, 18 defendants, 56 suspects" in the alleged criminal offending to be explored at the trial. It was in this context that I was reminded, again, of the materials relating to the ill-treatment and discrimination against individuals of Roma ethnicity. To take one example emphasised from the materials, there is the description in the UN OHCHR report of 25 August 2021 describing the Roma community continuing to suffer from widespread discrimination exclusion and, earlier in that report, describing the prevalence of racist hate speech in Hungary against Roma and other minorities. Ms Westcott referred to what she said were evidenced concerns of sufficient protection or, as she put it, inoculation against risk. She relied, in the context not of treatment of Roma but rather of high profile cases, on an example given in the evidence discussed in the judgment in Bogdan at §31(h) to a case involving "toxic sludge" which had killed 10 people where politicians had made comments before criminal cases had got underway.

21. What was submitted was this. Given all these features and in all those circumstances, given the context and the recent developments, given the 'general' points and concerns, combined with all the other features of these cases, the evidence gives rise to a reasonably arguable case of "real risk" of "flagrant breach" of fair trial rights. I cannot accept that submission.

22. Although the alleged crimes are serious in their nature they are nevertheless "ordinary" crimes with "no political connotations". In Bogdan, Julian Knowles J considered matters of human trafficking, theft and robbery where the requested person had been convicted of criminal conduct: targeting vulnerable individuals with access to state benefits or family allowances and persuading the victims to hand over allowances or benefits and taking over their records and personal documents; forcing victims to live in disused flats with no heating, drinking water, electricity, toilets, cooking or washing facilities and left to eat leftover food and going hungry; as well as being physically and verbally assaulted and having their freedom of movement severely restricted and being threatened. Julian Knowles J said these were "plainly very serious". But they were nevertheless "common or garden criminal offences" with "no political element whatsoever": Bogdan §§3-4. Given that seriousness, no doubt that had been a prosecution which could also be said to be of "paramount importance", and presumably with the requested persons in "leadership roles"; and in a sense the case may have had a "high profile". The point being emphasised was that there was "no political element whatsoever". Julian Knowles J returned to this

theme several times in subsequent passages. He drew attention to Wozniak §217 where the index criminal offences were recorded by the Divisional Court as being offences "with no political overtones" (Bogdan §25). He recorded the submission of the Hungarian requesting state authorities, about persons "accused of ordinary crimes with no political component", just as in Wozniak (Bogdan §61). In recording key passages from the district judge's judgment in Bogdan, he specifically included a passage recording that the requested persons' cases were "a classic example of ordinary criminal offending without a political or sensitive context" (Bogdan §66).

23. In my judgment, the equivalent, important points all fall to be made in the present case. Similarly, in the Sub-Committee report (25 March 2022) on downgrading the Ombudsman, emphasis is placed on "cases deemed political and institutional" (§7.1(1)). But finally, there is the requested persons' own expert evidence. In Bogdan emphasis was placed on the fact that the expert evidence "did not support [the requested person's] case" (§66) in relation to a specific and precise impact on an individual applicant (§65). The same is true in the present case. The requested persons expert (Dr Csire) said in his report that the requested persons "are charged with offences that are politically neutral"; that "I do not believe that the outcome of their cases would be affected by deterioration in rule of law"; and that this was because "simply speaking, these offences are not the kind that deserves any special attention from any who wishes to influence judicial independence". Whatever the ongoing – including the most recent – general and systemic picture in relation to Hungary, there is no reasonably arguable basis, in my judgment, to impugn that as a characterisation of the circumstances of the alleged offences and the implications of trial for offences of that nature. That, in my judgment, is an approach which illustrates the way in which the 'generic' and 'general' material is not forgotten or 'excluded' but is very much borne in mind when the viability of an argument in relation to Stage 2 is being considered.

Conclusion

24. In light of all the materials, and considering it as a whole, there is no realistic prospect that the Court at a substantive hearing would find that the Stage 2 test is satisfied, and that there is a real risk of a flagrant breach of Article 6 fair trial rights in these specific cases. The section 2 and Article 5 argument fail for the same reason. The section 2/Article 6 ground of appeal is not reasonably arguable. I will refuse permission to appeal. As the fresh evidence relied on is incapable of being decisive, I will formally refuse permission to rely on it. As I will record in a recital to my Order, this is the final issue before the Court so that these cases are now finally determined by this Court.

29.7.22