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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2022] EWHC 3484 (Admin)

CO/1479/2021

Royal Courts of Justice

Wednesday, 7 December 2022

Before:

MR JUSTICE LANE

IN THE MATTER OF **AN APPEAL UNDER S.28 OF THE EXTRADITION ACT 2003**

B E T W E E N :

CENTRAL DISTRICT COURT OF BUDA (HUNGARY)

Appellant

- and -

MARINA HORVATH

Respondent

MISS A BOSTOCK and MISS H BURTON (instructed by Crown Prosecution Service Extradition) appeared on behalf of the Appellant.

MR G HALL (instructed by Dalton Holmes Gray) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE LANE:

1 This is an appeal brought, with permission granted by Fordham J, by the Central District Court of Buda against the decision of a district judge sitting at Westminster Magistrates' Court to order the discharge of the respondent, Marina Horvath, under section 21A(4) of the Extradition Act 2003, on the basis that the respondent's extradition to Hungary would not be compatible with the rights contained in the European Convention on Human Rights; specifically, in this case, the right to respect for family life contained in Article 8 of the Convention.

2 The relevant background is as follows. The respondent's surrender is sought pursuant to an EAW dated 30 July 2019. This was certified by the National Crime Agency on 28 August 2019. It seeks the respondent's return to Hungary to stand trial in relation to her "leading role", as it is described, in an organised crime group (or "OCG") which was engaged in defrauding 12 elderly victims in what are termed "grandchild fraud offences". Those offences and the harm which they have caused to elderly victims are fully set out in the materials that were before the district judge. They disclose a serious piece of organised criminality, which has caused national concern in Hungary.

3 The way in which the conspiracy worked was as follows. Elderly individuals were located and then contacted by telephone. The respondent, it is said, or another, would then pose as the victim's relative or as an individual with whom the victim's relative was said to have been in a road accident. The victims were told that the damage from the accident was considerable and sometimes even that a child had been injured. They were told that they needed to send money immediately to pay for damages; or in some circumstances to avoid police involvement; or, in others, to avoid their grandchild being hurt. In fear, the elderly victim would hand over cash or valuables to a lesser individual within the OCG. That individual would be waiting outside the premises of the elderly victim. This was to avoid the victim having any time to seek help or advice.

4 The equivalent of over £40,000 was stolen from the 12 elderly individuals and the money sent to the respondent and her fellow organisers. This is said to have been to fund their lifestyles in the United Kingdom.

5 The respondent is also sought for a thirteenth offence of laundering the equivalent of some £7,200 of the proceeds, through bank accounts in her name.

6 According to the Hungarian authorities, the respondent is said to have been at the top of the OCG, controlling the offending from the United Kingdom, whilst conspiratorially instructing others living in Hungary and ranked lower in the hierarchy to recruit perpetrators in that country, who would collect the cash from the victims in the way I have described.

7 The operation is said to have been meticulously planned and repeated. The fact that it is described as particularly unpleasant offending, targeting elderly and vulnerable people, seems to me to speak for itself.

8 The maximum sentence which could be imposed upon the respondent is ten years' imprisonment. A domestic warrant was issued for her arrest on 22 July 2019.

9 The district judge produced a very detailed judgment. It runs to some 208 paragraphs. The judgment dealt not only with the respondent but also with her now estranged husband, who was also alleged to be a leading member of the OCG involved in defrauding the elderly victims.

10 The district judge considered the husband to have had the prime role in this regard. The husband's challenge to extradition was unsuccessful.

11 The reason why the respondent's case succeeded before the district judge was because of the district judge's findings on the effect that the respondent's extradition would have on her daughter. This daughter was born on 3 December 2018 and was aged some two years and four months at the date of the judgment. At para.119 of the judgment, the district judge found "the balance to have been a fine one − exercised, just, in favour of" the respondent and her daughter.

12 The appellant says that there are multiple errors in the district judge's judgment and that, as a result, his conclusion, finely balanced as it was, has to be wrong and that this court should so find, pursuant to section 29(2) and (3) of the 2003 Act.

13 There is an application by the respondent to admit new evidence in this appeal. Much of this evidence would, I find, be admissible in the event that the district judge's Article 8 analysis was found by this court to be defective. This is because in such a situation it would fall to this court to undertake the Article 8 balancing exercise based upon the position as it is now. If having done so, this court's conclusion would be that extradition would be a disproportionate interference with Article 8 rights, then the condition in section 29(3)(a) of the 2003 Act would not be satisfied and so the appeal would be dismissed.

14 The new evidence comprises, in the main, a report from Dr Sharon Pettle. She is a consultant clinical psychologist. Amongst other things, this report comments on two expert reports prepared for the respondent by Dr Peter Corr. He, too, is a consultant clinical psychologist. His reports were prepared before the time of the hearing in Westminster Magistrates' Court, but they were not used by the respondent and so were not before the district judge. The district judge, accordingly, was faced with a paucity of objective evidence on the critical issue of the effect of the respondent's extradition on her daughter.

15 There is also new evidence comprising a letter from a social worker at Sheffield City Council, in whose area the respondent and her daughter reside. The letter describes the respondent's relationship with her daughter, the latter's enrolment in nursery school and the fact that the respondent's 17-year-old nephew now lives with them. It appears that the nephew is the child of other members of the alleged OCG.

16 There is also a death certificate, with translation, confirming the death of Rudolf Lakatos. He is the respondent's father.

17 At the hearing, I admitted the new evidence *de bene esse*. I have, in the event, taken it all into account.

18 There is no dispute as to the relevant case law, nor that the district judge was well aware of it. The judgment is careful to make reference to the leading cases on Article 8 in the extradition context. In *HH and Others v. Deputy Prosecutor of the Italian Republic* [2012] UKSC 35, Lady Hale said at para.8:

> "It is likely that the public interest in extradition will outweigh Article 8 rights of the family unless the consequences of the interference with family life will be particularly severe."

Likewise, at para.132, Lord Judge said:

> "The extradition process involves the proper fulfilment of our international obligations rather than domestic sentencing principles. So far as the interests of dependent children are concerned, perhaps the crucial difference between extradition and imprisonment in our own sentencing structures is that extradition involves the removal of a parent or parents out of the jurisdiction and the service of any sentence abroad, whereas, to the extent that with prison overcrowding the prison authorities can manage it, the family links of the defendants are firmly in mind when decisions are made about the establishment where the sentence should be served. Nevertheless for the reasons explained in Norris the fulfilment of our international obligations remains an imperative. ZH (Tanzania) did not diminish that imperative. When resistance to extradition is advanced, as in effect it is in each of these appeals, on the basis of the article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence: any other approach would be inconsistent with the principles of international comity. At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration or the level of sentences or the arrangements for prisoner release which we are informed are likely to operate in the country seeking extradition. It certainly does not follow that extradition should be refused just because the sentencing court in this country would not order an immediate custodial sentence: however it would become relevant to the decision if the interests of a child or children might tip the sentencing scale here so as to reduce what would otherwise be an immediate custodial sentence in favour of a noncustodial sentence (including a suspended sentence)."

19 It is worth pausing here to note that, as I shall explain in due course, the district judge in the present case was concerned to ascertain whether, if convicted here, the respondent would receive an immediate custodial sentence.

20 The Article 8 balancing exercise will need to be retaken by this Court if it concludes that the approach of the district judge on this issue was wrong. It is important to emphasise that being "wrong" in this context does not necessarily mean reaching a result that the appellate Court would not have reached on the same facts. In *Love v. USA* [2018] EWHC 712 (Admin.), the Divisional Court said:

> "The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed."

Love perhaps represents the broadest high-level articulation of the appellate court's ability to intervene in these matters. Even there, however, it is noteworthy that the Divisional Court emphasised that the difference between it and the court below as to the weight attributed to various factors needs to be profound or "so significantly" different.

21 In most cases, however, it remains the position that the reason for intervention at the appellate level will be because an error is detected which is of a kind recognisable in the

public law context, such as having regard to an irrelevant matter or failing to have regard to a matter that is plainly relevant to the balancing exercise. In the present case, the appellant submits, in effect, that the district judge made a number of significant errors of this kind.

22 The first error is that the district judge incorrectly drew the conclusion that the respondent "played a secondary role" in the OCG compared with her husband. This led the district judge to treat the extradition offences as less serious than they obviously are, leading to his conclusion that, if the respondent were to be convicted of them in this jurisdiction, she could, at least conceivably, receive a suspended sentence.

23 The respondent, through Mr Hall, responds to this as follows. First, he points out that the district judge found as a factor in favour of extradition that the respondent had a "central role" regarding the 12 offences as well as the money laundering offence. Mr Hall submits that the judge was plainly right to describe the respondent's role as secondary compared to that of Mr Horvath. The latter is implicated in offending spanning a longer period concerning over £500,000 extracted from some 220 victims, although, in the event, Miss Bostock says that that figure may actually be wrong.

24 Be that as it may, the respondent contends that the appellant impermissibly seeks to elevate the respondent's role over and above what is particularised in the EAW.

25 Secondly, Mr Hall says the judge did not misapply the sentencing guidelines. What the judge did was to look at the UK Sentencing Guidelines and operate them so as to reach the position that, on the basis of his view of the seriousness of the offence and the harm caused, and taking account and giving due weight to a guilty plea, the respondent, if convicted of the offences in this jurisdiction, would face a sentence of two years' imprisonment. That brought her within the reach of the suspended sentence regime.

26 Mr Hall says that the district judge, in so finding, did not state that the respondent would receive a suspended sentence, merely that she could receive one. But, in any event, the judge's conclusion was that this was, in effect, one of the very rare cases identified in the case law where extradition would, nevertheless, be disproportionate.

27 I agree with all of that. However, in my view, that does not dispose of the appellant's challenge under this head. As I have said, even with this finding, the district judge reached the view that the respondent could argue that a sentence would be three years after trial, two years on an early guilty plea; and that this was "within the realms of a suspended sentence in the UK". That was said at para.181 of his judgment and the district judge returned to the point at para. 195 of the judgment.

28 There was, however, no basis, in my view, for the district judge to assume that it was likely that the respondent would acknowledge her central role in the OCG and plead guilty to the offences. Accordingly, there was no basis for the district judge to factor into his Article 8 balancing exercise the possibility, let alone the likelihood, that the respondent would receive a non-custodial sentence if convicted here.

29 The respondent effectively acknowledges this problem. In para.18 of his skeleton argument, Mr Hall says that, even if the respondent would receive a custodial sentence in the UK, this was one of the very rare cases where extradition would be disproportionate. But, at this point, the district judge has plainly failed to have regard to an obviously material consideration. If the respondent would be sent to prison, if she were convicted in England and Wales, then the district judge needed to deal with the consequence of that for the respondent's daughter. The consequence was, of course, that the respondent's daughter

would need to be looked after whilst the respondent was serving her sentence. That consideration was not explored. Furthermore, and in any event, looking at the case as one that could merit a suspended sentence underplayed the gravity of the offending and, therefore, affected the weight to be given to the importance of extradition. This was so despite the fact that the district judge was entitled to say what he did at para.182 of his judgment on the issue of there being no indication of further possible offending on the part of the respondent. Miss Bostock complains about the district judge's reference at this point to the respondent being "rehabilitated". I do not, however, consider anything turns on his use of that word.

30 The appellant's next challenge is to the district judge's findings on the care options for the daughter. At paras.184, 185 and 192 of his judgment, the district judge said this:

> "184. Having been granted bail in January 2021, RP MH is now the sole carer for her child, of which RP EH is the father. She has two children in Hungary, but has no relationship with them at all. She says that is entirely the fault of her former husband and his family. It appears that a Hungarian family Court made the decision that the children should live with their father. As her child in the UK was taken into care when she was first remanded in custody, it is clear that the UK social services have some oversight of her parenting abilities. She was, following her release, initially permitted supervised contact, but her child has now been returned to her full time care. I have seen a letter from the child's social worker which warns of the consequential harm should the child be separated from her mother again.
>
> 185. That said, there is a care plan of sorts in that RP MH hopes her father will come to the UK to 'collect' the child if that becomes necessary. That would require a decision of the family Court. There would be an inevitable period in which the child would be held in foster care. There is no guarantee that the child would be placed with her grandfather."
>
> …
>
> 192. I have had to consider the interests of young children when sitting as a judge of the family court, and when sitting as an Appropriate Judge in extradition proceedings. I am not going to repeat the observations of the Courts in *HH* or *Celinski.* I have the relevant text and tests well in mind. If I order RP MH's extradition, [daughter's] immediate care will fall to the local authority in the place she is living. There will then be proceedings in a family court to ascertain how her care needs can best be met. It is not simply a case of RP MH's father coming to the UK to collect the child. There would have to be an assessment of him as a care giver. It may be the family court in England would transfer the proceedings to Hungary. It may be that RP MH will obtain bail if returned there. If so, that is unlikely to be immediate. I accept Dr Csire's evidence as to that."

31 There was, however, evidence before the district judge which disclosed a very different picture. At pp.120 of the trial bundle, we see that, on 20 November 2020, the respondent's solicitors emailed Sheffield social services to say that the daughter's grandparents – that is in the plural – are "all very keen to look after her" (the daughter) in Hungary. Contact details are given for the respondent's father, now I accept deceased, but also for the son of

Mr Horvath in Hungary – I take him to be the daughter's half-brother – and also the daughter's paternal grandmother. There were, thus, multiple possibilities for the daughter to be taken and looked after in Hungary in the event of the respondent's extradition.

32 I take account of the fact that the district judge also sits in the family jurisdiction and of the expertise he has in this field. There was, however, no attempt by him to grapple with this evidence and its consequences or to appreciate that there was no necessary correlation between what had happened when the respondent was apprehended in the United Kingdom and remanded in custody and what could be arranged in the circumstances as they would be in advance of the respondent's extradition. There was no reason to assume that there could not be proper planning and coordination, so as to avoid the daughter having to spend any further time in foster care.

33 The district judge failed to appreciate that, at the point of extradition, the respondent would, as she does now, have custody of her daughter; not social services. Accordingly, there was no proper basis for assuming that social services would have to be involved and that foster care would be necessary.

34 The next challenge concerns the district judge's finding that, at least for a considerable period of time, the respondent would be unlikely to be granted bail in Hungary. In the appellant's skeleton argument, we find this:

> "The extradition request in this case, relates to allegations against the Respondent as opposed to a sentence having already been imposed. Her return is therefore to stand trial. Further information has confirmed that she is not a fugitive from Hungary and she has been released on bail during UK proceedings and complied with her conditions to date. Should she be returned to Hungary, the Hungarian Court would inarguably have the option of granting her bail pending trial and would have to take those factors into consideration as an ECHR signatory. The further information specifically notes the option of electronic tagging which will allow the respondent to remain with her child pending trial."

35 The appellant therefore submits that, if the respondent were granted bail, she would be able to reside with her daughter until the trial. At that trial, of course, she may be acquitted. If not, the Court in Hungary would have to analyse the impact on the daughter, as it then would be, before imposing any sentence.

36 Despite all this, the district judge was persuaded that bail was unlikely. This was as a result of hearing evidence from the Hungarian lawyer expert called by the respondent before the district judge. The appellant makes various complaints about the way in which this evidence emerged and how it was taken into account by the district judge, despite the appellant's objections.

37 Mr Hall counters this as follows. He points out that issues concerning bail will often be relevant in sole or primary carer cases. The appellant, he says, could at any stage have sought the information from the Hungarian authorities as to whether bail would, in the circumstances, be likely. Given the evidence as it emerged before the district judge, it would have been possible, says Mr Hall, for the appellant to have sought an adjournment in order to obtain its own information regarding bail.

38 Mr Hall says that any assumption that the Hungarian court would consider bail fairly, by reference to the principle of mutual trust, was no more than speculation. He points to cases,

including *R (McKinnon) v Secretary of State* [2012] Crim.LR 421 and *Emberson v. France (No.2)* [2015] EWHC 3955 (Admin.) as indicative of the fact that the Court must, if appropriate, grapple with the issue of bail and reach a decision as to whether bail is likely to be granted.

39 I accept much of what Mr Hall says on this issue. On the crucial aspect, however, I agree with Miss Bostock. The district judge could not disregard entirely the principle of mutual trust, just because a witness had without prior notice told the judge that bail was, in his view, unlikely, at least at first. Hungary is a signatory of the ECHR. Hungary cannot readily be assumed in this, or indeed other relevant context, not to be capable and willing of acting in a way compatible with its obligations under the Convention. This is particularly so, given the evidence concerning the availability of electronic tagging and, indeed, the evidence of compliance by the respondent with the conditions of her bail in England and Wales.

40 I accept that courts must be prepared to take a view on the likelihood of bail, but they must do so on all the evidence and having regard to all material considerations. The district judge was entitled to have regard to Dr Csire's evidence, but he also had to put that evidence in its proper context. He failed to take account of the principle of mutual trust, Hungary's ECHR signatory status, the respondent's lack of antecedents, the age of her daughter and the availability of electronic tagging to enforce conditions of bail in Hungary. All of those were plainly relevant. They are not matters that can be brushed aside as being mere speculation. This head of challenge is, accordingly, made out.

41 The next head of challenge is to what the appellant says are "unsupported conclusions" in relation to the likely level of harm which would be caused to the respondent's daughter.

42 At para.193 of his judgment, the district judge said this:

> "Whilst there are many maybe's, there is a certainty. As observed in *HH* the crucial years in any child's life, the period when they form strong attachments to a parent, are the years up to the age of 4. Any fracture of a significant relationship in that period will have profound consequences for that child's welfare forever. If RP MH and [daughter] are separated for any appreciable period over the next two years, irreparable harm will be caused to [daughter]. That is the certainty to which I refer."

43 Mr Hall submits that the district judge had to undertake an evaluative exercise. He was entitled to rely on a paper published by the Children's Commissioner for England in 2008 entitled "Prison Mother and Baby Units: Do they Meet the Best Interests of the Child?" This paper was cited by Lord Wilson in para.160 of *HH* for the conclusion that:

> "severe psychological damage may occur to babies if the bond or attachment with primary care giver is severed between the age of six months and four years."

44 Mr Hall argues that the district judge, at para.193 of the judgment, was not concluding that the extradition of a sole carer of a child under four will always be disproportionate. Rather, he was undertaking a multifactorial analysis.

45 I have considerable sympathy for the district judge in having to grapple with this issue in the absence of any specific expert evidence regarding the effect of extradition on the daughter.

In fact, unknown to the district judge, such expert evidence had been obtained by the respondent. It was, however, decided not to put it before the district judge. That was undoubtedly a choice available to the respondent.

46 The evidence is, nevertheless, now before this court. It comprises two reports from Dr Peter Corr, a consultant clinical psychologist. In his first report, Dr Corr concluded as follows at 1.04:

> "From the assessment report it can be seen that I have concluded the following:
>
> (1) In the shorter term, extradition of the mother to Hungary will have little or no impact for [daughter]
>
> (2) In the longer term, extradition of the mother to Hungary will fundamentally affect the future relationship between [daughter] and her mother
>
> (3) In the longer term, extradition of the mother to Hungary is likely to impact [daughter] as she develops an awareness of her circumstances and she will require support in developing an understanding of her cultural and social heritage, and in developing relationships with her mother and other family members."

47 A further report was obtained from Dr Corr on the effects of extradition now that the daughter was again being cared for by the respondent. Dr Corr's conclusions were as follows:

> "In my opinion, if Mrs Horvath were to be extradited to Hungary, then in the shorter term this will have a damaging impact for [daughter] as this will represent a further change in her primary carer and care circumstances. It will create a further experience of losing a primary carer, losing her safe place for emotional security and a further disruption to stability."

Dr Corr then went on to give further details.

48 It is plain that this evidence of Dr Corr is at odds with the conclusions which the district judge reached on the necessarily generalised material before him, and that which was referenced by Lord Wilson in *HH*. There is nothing in Dr Corr's reports to show that, even allowing for the erroneously low setting by the district judge of the public interest in the extradition of the respondent, the effects on the daughter would be such as to make this the sort of case where, having regard to the authorities mentioned earlier, extradition would be incompatible with ECHR Article 8.

49 It is fair to say that the respondent does not place any weight upon the reports of Dr Corr. The respondent seeks to contrast those reports and the picture they might give with the expert report of Dr Pettle. This is a more recent report on the respondent and the daughter.

50 At para.7.2.4, Dr Pettle addresses the question: "What impact will extradition have on [daughter] in the short, medium and long-term?":

> "7.2.4. It is inevitable that another lengthy separation from her mother would cause [daughter] intense distress. A young child cannot comprehend an absence lasting some years and it is particularly salient that meaningful contact is likely to be impossible. Such a separation could be thought of as akin to a death, which is a devastating loss for any child. [Daughter] does not have the benefit of siblings who might offer some sense of family for her through this period. She has already experienced a traumatic sudden absence of both parents and spent months without reassurance that either of them might return, a repeat of this is very likely to be psychologically damaging."

51 At 7.2.28 Dr Pettle addresses a question arising from a passage in the judgment of the district judge to which I shall turn in due course. The question is:

> "Are you able to provide an opinion as to whether extradition would be appropriate in 3 years' time? If not, why not?
>
> 7.2.28 I cannot give an opinion regarding the 'appropriateness' of extradition in a few years' time, but I have provided an opinion of the likely effects on, and consequences for, [daughter] so that this can be weighed with other factors. This is given in detail above. In summary, in my opinion, it would take [daughter] a long time to recover, even superficially, from the difficulties likely to follow another prolonged separation from her mother. This is likely to leave lasting emotional damage and lead her to be more vulnerable to later psychological difficulties. Even if [daughter] is five or six when this happens, Ms Horvath's extradition would be likely to have a profoundly debilitating effect on her daughter and lead to significant negative consequences in the future."

52 There are two basic reasons why I have concluded that Dr Pettle's report cannot assist in supporting the district judge's overall conclusions. First, her report has to be read alongside those of Dr Corr. In so saying, I fully take on board Mr Hall's points that Dr Pettle had greater access to the respondent than had Dr Corr and that she met the daughter both with the respondent and at the daughter's nursery. Dr Corr is, however, an expert witness. He was fully aware of the limitations under which he had to operate. He, nevertheless, saw fit to put his name to the reports and those reports are markedly more sanguine than the findings of the district judge.

53 Second, much of Dr Pettle's report is framed on the assumption that the daughter will remain in the United Kingdom if the respondent were extradited. That is certainly the thrust of 7.2.4 of her report, relied on by Mr Hall with its description of another lengthy separation for the respondent causing "acute distress", which "could be thought of as akin to a death, which is a devastating loss for any child."

54 The report does, however, also deal with the question of what would happen if the daughter went with suitable carers to Hungary. At 7.2.9, Dr Pettle says this:

> "If [daughter] moved to Hungary to live with a family member she is more likely to be able to talk with her mother on the telephone and may be able to visit. Juhász [2020]1 reported nothing about whether prison visiting venues are child friendly. Depending on the level of prison the frequency/length of visits vary and in a more lenient regime an inmate may receive a visitor twice a month for 60 minutes. This recent review of Hungarian prisons clarified that there are two prisons specifically for women and female wings in male

> prisons. Although in principle 'prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation' this does not always happen, partly due to an effort to decrease overcrowding. As a result, this often makes 'the maintenance of family ties more difficult'. Distance and cost may make it impossible to visit often, or at all, given the financial disadvantages often experienced by Roma families."

55 This conclusion is markedly different from the conclusions that Dr Pettle reaches about the effects on the daughter in other scenarios. Further, the last sentence in 7.2.9, about the difficulties experienced by Roma families, is, in my view, undermined by the fact that family members obviously had the requisite financial resources to be willing to come to England to take the daughter when the respondent was arrested here.

56 I have referred earlier to these offers of help from the family at the time of the respondent's arrest. At 7.2.11 of her report, Dr Pettle says the respondent had told her that both of the possible Hungarian families in Sheffield identified by the respondent had declined when asked to help.

57 The availability of more meaningful care by relatives in Hungary was also explored, beginning at para.2.2.6 of Dr Pettle's report. The account given by the respondent of who might be available in Hungary to look after her daughter differs greatly from what the evidence discloses was the position when the respondent was arrested in the United Kingdom. At para.5.6 of the report, there is the following description of what Ms Coulthard, a children's advanced social worker, was able to discover shortly after that arrest:

> "Ms Coulthard was unable to get a clear picture of [daughter's] extended family and knew little of the dynamics between the relatives. She contacted [daughter's] paternal grandmother Jozefina, and they spoke with help from an interpreter. She had said that she wanted to care for [daughter] and was willing to be assessed to do so. Ms Coulthard got the impression that one of her eight children lived with her and would share this task - she thought his name was also Erno and he was a stepbrother to Mr Horvath. He told her that he had visited the UK about four months previously and had met [daughter] and that he would fly over to collect her. Efforts were made to contact International Social Services so that these family members could be assessed as potential carers but there was no response. There were also efforts made to see if the Hungarian police held details about any members of the family, but no information was provided. Ms Coulthard reported that she did not speak to any relative on the maternal side as she was not given any details and understood that there was no one who could step in to look after [daughter]. Then Ms Horvath was released and finding family to care for [daughter] ceased to be necessary."

58 Mr Hall says that no one came forward at that time and that this in itself is good evidence of what will or, rather, will not happen in the event of extradition. I disagree. The timetable following the respondent's arrest was such that, by early December 2020, when bail, in principle, was ordered by the High Court, albeit that it took longer to effect the respondent's release, there was no necessity for any relatives to come from Hungary. Nothing of value can be inferred from the fact that no relatives appeared at that time. What remains important, by contrast, is the evident willingness to assist on the part of relatives. This stands in stark contrast to the respondent's assertions to Dr Pettle. Those assertions fall to

be treated with extreme scepticism. These are matters that the appellant cannot reasonably be expected to investigate.

59 All of this means that there is little of value for the respondent in 7.2.12 and following of Dr Pettle's report, where she answered the question:

> "If [daughter] were to be extradited with Ms Horvath, Ms Horvath remanded to custody and [daughter] subsequently transferred to the care system in Hungary, would this raise any concerns?"

60 In her answer, Dr Pettle refers to literature concerning the position of Roma children in care in Hungary. The admissibility of this and Dr Pettle's ability to rely on it have been questioned by the appellant. There is, however, no need for me to rule on those objections since the evidence cannot, in any event, avail the respondent. There is no reason on the evidence to assume that the daughter would have to go into the care system in Hungary.

61 The generalised evidence concerning discrimination against Roma in the education sector is not, in my view, a matter that can play any meaningful part in determining proportionality in a case of the present kind.

62 I mentioned earlier that new evidence from Sheffield social services states that the respondent's 17-year-old nephew is living with her. The appellant considers it likely that this nephew is the child of another member of the alleged OCG, whose appeal against the judgment of a district judge ordering extradition has been refused permission. That may be so. There is, however, a complete dearth of evidence regarding the nephew, including as to whether he has any other family members with whom he could stay, if necessary. I also note that he is nearing his 18th birthday. His appearance on the scene cannot, therefore, have any material bearing on whether the appellant should be extradited, save that it is a further indication of the family's ability and willingness to look after each other's children. To that extent, the evidence regarding the nephew reinforces the evidence regarding what is likely to happen to the daughter of the respondent in the event of the latter's extradition.

63 The final area of challenge to the district judge's judgment is the one which, understandably, attracted the particular attention of Fordham J at the oral renewal hearing. At para.195 of his judgment, the district judge said this:

> "If I discharge RP MH now, it does not mean that she will never stand trial in Hungary. It does mean that her trial will be delayed. In two years' time, her child will be approaching 5 years of age. JA may then re-issue the EAW. RP MH would then be expected to take steps for the transit of her child into the care of her father. The consequent distress to [daughter] will no doubt be significant − but the consequences would not (according to attachment theory) be irretrievable."

Then at the end of para.197, he said, when summing the matter up:

> "On this sole basis − and anticipating that RP MH will face a further extradition request within a matter of 2 to 3 years from now, I discharge her from this extradition request."

At para.198, the district judge said:

> "As to RP MH's Article 8 Rights – insofar as they are the mirror of those of her daughter, I would discharge her on the basis of the interference with her relationship with her daughter but on no other basis. She ought to be tried for her alleged offending – and I hope she will be – but in due course and not before [daughter] is older than 4 or 5 years."

64 Miss Bostock has this to say about the district judge's reliance on the fact that the effect on the daughter will be less in the future than it is now. She says that the analysis fails to take into account the diplomatic relationship that exists between Member States and also the fact that the case involves multiple elderly victims and co-defendants. The interests of victims are a feature of the public interest in extradition. The impact upon the proceedings as a whole of having a key player's trial delayed for two or three years appears not to have been considered at all. The district judge has completely disregarded the trust he should place in the Hungarian court to take into account the interests of the child when making decisions on bail and sentence.

65 Mr Hall seeks to justify the district judge's approach in a number of ways. First, he says that it was merely part of the overall evaluative exercise that the judge had to undertake. Secondly, he seeks to derive material support for the judge's approach from the high authority of Baroness Hale, who at para. 79 of the judgment in *HH and Others*, when dealing with the party known as "PH", said as follows:

> "The circumstances in this case can properly be described as exceptional. The effect upon the children, but Z in particular, of extraditing both their parents will be exceptionally severe. The effect of extraditing their mother alone would not be so severe and is clearly outweighed by the public interest in returning her to Italy. But the same cannot be said of the effect of extraditing their father. I have, not without considerable hesitation, reached the conclusion that it is 'currently' so severe that the proportionality exercise requires the Court to consider whether it can be mitigated. If he is discharged in the current proceedings (and in these I would include the proceedings under the warrant issued in September 2011), it will remain open to the Italian authorities to consider whether to issue another warrant in the future, when the effect upon the children will not be so severe."

66 Mr Hall submits that there have been no *dicta* that Baroness Hale's statement was wrong. However, one has to look no further than para.95 of the judgment in *HH* to see such *dicta*. There, Lord Hope, who, unlike Lady Hale, was in the majority in dismissing PH's appeal, said this:

> "I was initially attracted by the argument that, if the family were living in Italy, the father would be allowed to serve most of the rest of his sentence at home so that he could look after the children. I was attracted too by the point that Lady Hale makes in para 79 that if extradition were to be refused now it would remain open to the Italian authorities to issue another warrant in the future when the effects on the children would not be so severe. But I have concluded that it is not open to us, as the requested Court, to question the decision of the requesting authorities to issue an arrest warrant at this stage. This is their case, not ours. Our duty is to give effect to the procedure which they have decided to invoke and the proper place for leniency to be exercised, if there are grounds for leniency, is Italy."

67 With respect, one can immediately see the force of Lord Hope's refusal to go down the path of considering whether extradition at some future point in time would be less injurious of Article 8 rights and, if it would, of using that finding as a factor weighing in the Article 8 balance in favour of the person facing extradition. The precise way in which this would apply is, presumably, to conclude that there is a less onerous way of effecting extradition; namely, to do it later.

68 One only has to articulate this proposition to realise its weakness. How is the court to be sure that a future request will land at a time when Article 8 considerations are likely to be different? The present case is a good example of the problem. Armed with the literature about attachment theory, which suggested that "the period when children form strong attachments to a parent are the years up to the age of four" (para.193 of the judgment), the district judge seems to have considered that it would be proportionate to extradite the respondent in two or three years' time. But at 7.2.28 of Dr Pettle's report, she says, entirely understandably, that "I cannot give an opinion regarding the appropriateness of extradition in a few years' time." Having said that, her report, nevertheless, does conclude by stating that:

> "Even if [daughter] is five or six when this happens, Mr Horvath's extradition would be likely to have a profoundly debilitating effect on her daughter and lead to significant negative consequences in the future."

So, the court could not be confident that the position as to Article 8 would be better at any future point.

69 There is also the obvious point made by Miss Bostock that the victims of the OCG's operations are elderly and, so far as their evidence may be needed at trial and, if a conviction ensues, at the sentencing stage, these victims may not be alive to give it or otherwise in a position to do so. The district judge gave no consideration to that matter.

70 It is true that these sorts of problems are inherent in section 25 of the 2003 Act. This reads as follows:

> "25 Physical or mental condition.
>
> (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
>
> (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
>
> (3) The judge must
>
> (a) order the person's discharge or
>
> (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

71 The fact is, however, that, in enacting section 25, Parliament specifically sanctioned a particular approach in respect of only the physical or mental condition of the person facing extradition. I agree with the appellant that Parliament would have made specific provision

for other situations, had it seen the need. This means that the absence of any such provision sends the important message that it is not for this court to infer such a provision.

72 I find that each of the errors I have identified would, on its own, have been sufficient to vitiate the district judge's Article 8 findings. I say this, particularly bearing in mind that, even on those findings, the district judge's conclusion was finely balanced.

73 I therefore turn to the re-making of the balancing exercise. I do so having regard to the totality of the evidence, as it now is, and to the submissions of counsel. The factors in favour of extradition are: first, the constant and weighty public interest in extradition that those accused of crimes should be brought to trial and the public interest in ensuring that extradition arrangements are honoured; and, second, that the United Kingdom should honour its international obligations and should not become or be seen as a safe haven for those seeking to evade justice.

74 Then there is the gravity of the alleged offences. The specific alleged offending is "organised, serious and sustained". Those are the words of the district judge. I agree with him.

75 The respondent is accused of playing a central role in 12 offences and in money laundering a considerable sum of money from the proceeds of crime.

76 The seriousness is reflected in the fact that she is likely to receive a significant custodial sentence if convicted. It is also reflected in the fact that, properly analysed in the way in which I have described earlier in this judgment, the courts in England and Wales are, in my view, likely to impose an immediate sentence of imprisonment if the trial were to take place here.

77 The factors weighing against extradition are as follows. There is no evidence that the respondent has committed offences whilst in the United Kingdom; furthermore, she has no criminal convictions in Hungary.

78 Next, and importantly of course, is the effect of extradition on the respondent's daughter. On any view, and having regard in particular to the evidence of Dr Pettle, this effect is likely to be serious.

79 Having regard to the totality of the evidence, however, I do not consider that it is likely to be as severe as is contended for by the respondent. I refer to what I have earlier said on this aspect of the matter. The evidence suggests that the likely scenario is that, in the event of extradition, relatives in Hungary would indeed be able and willing to care for the daughter in that country. That is if the respondent were unable to do so at any point. I do not accept the recent claims of the respondent that potential carers are no longer available.

80 I also bear in mind that, as Miss Bostock says, the timing of extradition can be engineered so as to enable relatives from Hungary to take the daughter back with them at a time when the daughter is still in the custody of the respondent.

81 At worst, if the respondent is not given bail in Hungary, I do accept that there will be an element of distress caused by the physical separation of the daughter from the respondent during that period. Nevertheless, the fact that she will be with her relatives in Hungary and that she will be able to see her mother as the prison authorities allow, and as Dr Pettle described, will ameliorate her position during that time.

82 In any event, I agree with the appellant that, having regard to all the evidence and the relevant considerations, including the evidence of Dr Csire, bail pending trial is likely.

83 On the totality of the evidence and applying the law as set out in the authorities mentioned earlier in this judgment, I conclude that extradition of the respondent would not violate Article 8 of the ECHR. The district judge was wrong to conclude otherwise. He ought to have decided the question before him differently and, if he had decided the question in the way in which he ought to have done, he would not have been required to order the respondent's discharge.

84 This appeal is accordingly allowed.