IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2023] EWHC 1357 (Admin)

CO/1115/2021

Royal Courts of Justice

Thursday, 11 May 2023

Before:

MR JUSTICE LANE

B E T W E E N :

FULOP

Appellant

- and -

LAW COURTS OF SZEGED (HUNGARY)

Respondent

MISS R HILL (instructed by Lawrence & Co) appeared on behalf of the Appellant.

MR J SMITH (instructed by the Crown Prosecution Service, Extradition) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE LANE:

1 The appellant appeals against the decision of District Judge Baraitser, as she then was, who, on 19 March 2021, ordered that the appellant be extradited to Hungary for drug offences. Permission was granted by Bourne J on 12 January 2023, following his earlier order granting permission to the appellant to amend his grounds of appeal in order to rely on section 25 of the Extradition Act 2003 and Article 8 of the ECHR.

2 In connection with these new grounds, the appellant has filed and served a report on him of Dr Imogen Kretzschmar, a consultant forensic psychiatrist. Dr Kretzschmar gave oral evidence before me via video link and was cross-examined by Mr Smith, on behalf of the respondent.

3 The relevant background is essentially as follows. The appellant is a Hungarian national, who was born on 20 November 1993. He faces a conviction warrant. Between October 2015 and 3 August 2016, the appellant purchased cannabis on nine occasions with intent to sell it on and use some for himself. He purchased a further 50 grammes of cannabis on 4 August 2016.

4 In the period between October 2015 and August 2016, the appellant sold cannabis to four persons on several occasions. A search of his home in Hungary on 5 August 2016 uncovered a set of scales contaminated with cannabis, and also some 25.79 grammes of the substance.

5 The appellant was held in custody following his arrest from 5 August 2016 until 14 July 2017. Thereafter, he was said to be under house arrest. Throughout the proceedings in Hungary, the appellant was present and represented by a lawyer.

6 On 21 June 2018, the appellant was sentenced to two years and ten months' imprisonment. The appellant then appealed. The appeal was unsuccessful. Importantly, as we shall see, after the appeal proceedings the appellant requested that the execution of his sentence should be delayed. This was because he said his girlfriend was pregnant and also that he had seasonal jobs in Hungary, which he needed to provide for his family. The request was granted. The execution of his sentence was adjourned. The appellant was required to attend prison on 25 June 2019. He failed to do so. It is common ground that he removed himself to the United Kingdom.

7 Allowing for the period between 5 August 2016 and 14 July 2017, when the appellant was incarcerated in Hungary, he still has some two years left to serve. I also note that he has served around one month on remand in custody in the United Kingdom.

8 The appellant was arrested here, pursuant to an arrest warrant, on 22 December 2020. He was released on bail on 27 January 2021. Since that time, he has been subject to bail conditions which include a requirement to be at home during certain hours.

9 The district judge concluded that the appellant's extradition would not be a breach of Article 8 of the ECHR. Before the district judge, the appellant's case in this regard was based on his relationship with his Hungarian national partner, his stepdaughter and the couple's son. The son had been born following the arrival of the family in the United Kingdom. The appellant was working, providing financially for his family here. Both he and his partner were said to have health issues. In the appellant's case, this was asthma; in his partner's case, it was acid reflux and certain thyroid problems.

10 The appellant initially sought permission to appeal the district judge's judgment on the ground that his extradition would be contrary to Article 3 of the ECHR, by reason of alleged seriously unsatisfactory prison conditions in Hungary. That ground has, however, been abandoned.

11 On 1 June 2022, the appellant filed a second witness statement. In it, he made the somewhat remarkable contention that, if he were to be extradited, his then unborn child by his partner would be aborted and he hoped, therefore, that the court would not force him and his partner into a situation in which they had to kill their child. Leaving that aside, the appellant said that it would be impossible for his partner to care for the two children on her own if he were extradited. This meant that the children would have to go into an orphanage. His partner would have to return to Hungary because she could not speak English and it would take time for her to obtain United Kingdom state benefits.

12 The statement then turns to the issue of the appellant's mental health. He records that, since the decision to extradite him was ordered on 19 March 2021, his mental health has deteriorated. Accordingly, he spoke with a therapist. The appellant said that, after a consultation in April 2021, he was given a prescription for a tranquiliser, the name of which he could not remember. He then spoke with reception at his GP's surgery in June 2022 and they told him that he needed to contact a mental health team about his mental health problems. They gave him the telephone number of the team. At that time, the appellant requested a copy of his medical records. He was told that it would take one or two weeks before he could receive those.

13 So far as his employment was concerned, the appellant says that he stopped working in April 2022, because, in his words, he was not "feeling very well". It appears, however, that the appellant subsequently obtained different employment, because his statement refers to a job which he began on 31 May 2022. When the appellant is working, he says that he suddenly shouts at people, owing to his mental health.

14 In para.13, the appellant stated that, when he was in prison in Hungary, he was raped. The rape happened after he had moved from a police detention centre to a prison detention centre. He refers to the name of the person who is said to have raped him. He also refers to the allegedly well-known fact that rape in prisons in Hungary is common and he did not want to experience this again. The appellant said it is a sensitive topic and hard to talk about. At para.17, the appellant said that he did not report the incident to the prison officials in Hungary because he thought that he would be targeted by other inmates and would not be treated kindly.

15 Dr Kretzschmar's report is dated 5 September 2022. She states that she was provided with the arrest warrant and the appellant's two witness statements. At para.43, she states that she did not have access to the appellant's GP records in order to coordinate those with the appellant's account.

16 Dr Kretzschmar was originally due to interview the appellant by video link. However, due to technical difficulties on 2 September 2022, this was not possible. Accordingly, the interview proceeded over the telephone. The appellant spoke in English. There was no Hungarian interpreter. Dr Kretzschmar has never met the appellant. She acknowledges at para.32 of her report that, as a result, "Appearances and behavioural observations were not available". At para.41, she reiterates that the interview was conducted by telephone due to the aforementioned technical failure, but she also says that the decision to proceed by telephone was due to "time pressures".

17 Dr Kretzschmar accepted that the appellant had been raped whilst in prison in Hungary. She accepted his account of his symptoms. She made a diagnosis of PTSD and moderate to severe depression. She considered his symptoms would deteriorate further if he were extradited, more than would be the case if he were in prison in the United Kingdom. At para.54 she said:

> "Mr Fulop ruminates on suicide as a preferred outcome if he is forced to leave his family due to extradition. There was also a reported serious suicide attempt using a high-risk method in the past and in the context of the same stressor. These factors put him at high risk of attempts or completed suicide."

18 The relevant law is as follows. By virtue of section 25 of the 2003 Act, a requested person is entitled to be discharged if "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". In *Government of the Republic of South Africa v. Dewani* [2013] 1 WLR 82, a Divisional Court, including the then President of the Queen's Bench Division, ruled that the terms "unjust or oppressive" require regard to be had to all relevant circumstances, including the fact that extradition is ordinarily likely to cause stress and hardship, neither of which is sufficient to meet the requirements of the section. The courts have consistently emphasised the fact that the section 25 threshold is a high one.

19 In the judgment of Aikens LJ in *Turner v. USA* [2012] EWHC 2426 (Admin.) seven propositions were distilled from the previous case law on the issue of suicide risk. Paragraph 28 of the judgment states:

> "There have been a number of cases in which the courts have considered what has to be established under section 91 of the Act (or the equivalent section in respect of an application for surrender under Part 1 of the Act, which is section 25) in order that a court may be satisfied that it would be unjust or oppressive to return a person to the state requesting extradition, because of the risk of suicide if the order to return were made. The relevant cases, which were recently examined with care by Bean J in *Marius Wrobel v Poland [2011] EWHC 374 at [17]* establish the following propositions: (1) the court has to form an overall judgment on the facts of the particular case: *United States v Tollman [2008] 3 All ER 150* at [50] per Moses LJ. (2) A high threshold has to be reached in order to satisfy the court that a requested person's physical or mental condition is such that it would be unjust or oppressive to extradite him: *Howes v HM's Advocate [2010] SCL 341* and the cases there cited by Lord Reed in a judgment of the Inner House. (3) The court must assess the mental condition of the person threatened with extradition and determine if it is linked to a risk of a suicide attempt if the extradition order were to be made. There has to be a 'substantial risk that [the appellant] will commit suicide'. The question is whether, on the evidence the risk of the appellant succeeding in committing suicide, whatever steps are taken is sufficiently great to result in a finding of oppression: see *Jansons v Latvia [2009] EWHC 1845* at [24] and [29]. (4) The mental condition of the person must be such that it removes his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying and if that is the case there is no oppression in ordering

extradition: *Rot v District Court of Lubin, Poland [2010] EWHC 1820* at [13] per Mitting J. (5) On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression: *ibid.* (6) Are there appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the person's mental condition and the risk of suicide: *ibid* at [26]. (7) There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind: *Norris v Government of the USA (No 2) [2010] 2 AC 487."*

20 In *Modi v. India* [2022] EWHC 2829 (Admin.) the Divisional Court considered the application of the so-called *Turner* propositions. Stuart-Smith LJ said this about proposition 4:

> "128. In our judgment, to the extent that Turner proposition (4) adds anything to propositions (3) and (5), its function is to indicate that in situations where the decision to commit suicide is voluntary, in the sense of being rational and thought-through, a finding of oppression should not be made. We heed Ms Malcolm's warning that it would be unwise to gloss Turner proposition (4) with some additional or alternative form of words which imports a specific causation test: the verb 'linked' already appears in proposition (3). In particular, we would deprecate any attempt to introduce concepts of causation as are routinely applied in tort or contract: the fact that (in conventional causation terms) a person's depression would be either a cause or even the dominant cause of a person's decision to commit suicide does not mean or necessarily suggest that the act was not voluntary within the meaning of Turner proposition (4).
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> 129. It is always to be remembered that the Turner propositions form part of a judgment that attempted to set out general principles. It is not to be treated in the same way as if it were embodied in a statute. In our judgment, Turner proposition (4) should be read in a common-sense, broad-brush way giving full effect to the question whether the act of suicide would be the person's voluntary act. This approach does not demand proof of 'impulse' as that term is used by clinicians. 'Compulsion', 'wish', 'desire' or 'intentions', as terms familiar to lay persons, are suitable synonyms; but none should be given particular precedence after being press-ganged into service. In Assange, the evidence was that the requested person had a 'single-minded determination' to commit suicide. Consistently with this approach, 'capacity' in proposition (4) is synonymous with 'ability' or 'capability'. It does not import the provisions or workings of the Mental Capacity Act 2005."

21 In *Wolkowicz v. Polish Judicial Authority* [2013] 1 WLR 2402, Sir John Thomas, President of the Queen's Bench Division, and Burnett J, as he then was, considered the issue of suicide at para.10. Paragraph 10 of the judgment reads as follows:

> "10. The key issue, as is apparent from propositions (3), (5) and (6), will in almost every case be the measures that are in place to prevent

any attempt at suicide by a requested person with a mental illness being successful. As Mr Watson correctly submitted on behalf of the respondent judicial authorities, it is helpful to examine the measures in relation to three stages:

i) First, the position whilst the requested person is being held in custody in the United Kingdom is clear. As Jackson LJ observed in *Mazurkiewicz* at paragraph 45, a person does not escape a sentence of imprisonment in the UK simply by pointing to the high risk of suicide. The court relies on the Executive branch of the state to implement measures to care for the prisoner under the arrangements explained in *R v Quazi* [2010] EWCA Crim 2759, [2011] Crim LR 159.

ii) Second, when the requested person is being transferred to the requesting state, arrangements are made by the Serious Organised Crime Agency (SOCA) with the authorities of the requesting state to ensure that during the transfer proper arrangements are in place to prevent suicide in appropriate cases. As Collins J helpfully mentioned in *Griffin* at paragraph 52, steps should ordinarily be taken in such cases to ensure that no attempt is made at suicide and proper preventative measures are in place. Medical records should be sent with the requested person and delivered to those who will have custody during transfer and in subsequent detention.

iii) Third, when the requested person is received by the requesting state in the custodial institution in which he is to be held, it will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary: see the authorities set out at paragraphs 3-7 of *Krolick and others v Several Judicial Authorities of Poland* [2012] EWHC 2357 and paragraphs 10-11 of *Rot*. In the absence of evidence to the necessary standard that calls into question the ability of the receiving state to discharge its responsibilities or a specific matter that gives cause for concern, it should not be necessary to require any assurances from requesting states within the European Union. It will therefore ordinarily be sufficient to rely on the presumption.

It is therefore only in a very rare case that a requested person will be likely to establish that measures to prevent a substantial risk of suicide will not be effective."

22 As explained by Lord Burnett CJ in *USA v. Julian Assange* [2022] 4 WLR 11, in the light of *Turner* and *Wolkowicz,* it will rarely be necessary to look beyond the judgments in those cases, when considering the principles to be applied in relation to oppression and suicide. There is certainly no obligation to guarantee that the requested person will not commit suicide (see para.63 of *Assange*).

23 It is noteworthy in the present case that the appellant accepts that there is a presumption that there will be medical facilities available of a type to be expected in a prison (as to which see

Kowalski v. Regional Court in Bielsko-Biala, Poland [2017] EWHC 1044). That presumption is rebuttable only by evidence.

24 As regards Article 8 of the ECHR, the legal position can, essentially, be distilled as follows. In considering whether extradition is proportionate with Article 8 rights, the court should consider whether the consequences of extradition are exceptionally serious (see *Norris v. Government of United States of America (No.2)* [2010] 2 WLR 572).

25 Exceptionality is in this regard a prediction and not a test (see *HH and Others v. Deputy Prosecutor of the Italian Republic, Genoa* [2012] 3 WLR 90).

26 There is a powerful public interest in giving effect to extradition arrangements honouring the United Kingdom's international obligations and also preventing fugitive offenders from evading justice (see *Norris* at para.105).

27 The seriousness or otherwise of the offending giving rise to extradition is a relevant consideration in the Article 8 balancing exercise (see *HH* at para.8).

28 The weight to be attached to the public interest in extradition will, therefore, vary according to the nature and seriousness of the crime involved (see *Celinski v. Others v. Polish Judicial Authority* [2016] 1WLR 551).

29 The passage of time since the offending will be a relevant consideration. Delay may, depending on the circumstances, both diminish the public interest in extradition and increase the impact of extradition on private or family life. Importantly, each case will often turn on analysis of its own individual facts.

DISCUSSION

30 I shall address first the section 25 ground. This ground is advanced on the basis that the appellant now says that he was raped in prison and that this is having a serious effect upon him. It is true that, as Miss Hill submits, a person should not be disbelieved because they did not refer to a traumatic event, such as rape, at the earliest opportunity or when it would otherwise have been expected that they might raise it. In the present case, that would be before or at least at the hearing in Westminster Magistrates' Court.

31 Whilst fully bearing this in mind, I consider that the timing of the revelation by the appellant is intensively problematic, when one puts it in the context of the appellant's overall behaviour. This includes his obvious dishonesty in advancing his partner's pregnancy and his desire to work in order to delay the commencement of his prison sentence; only to use that delay in order to flee Hungary and establish himself and his partner in the United Kingdom. Miss Hill submits that the appellant was not found by the district judge to be an incredible witness. I agree; but, in the circumstances, that says little, given what was then at issue. I agree with Mr Smith that the appellant's credibility must be regarded as damaged by the fact that he initially denied that he was a fugitive, only accepting that he was when giving his evidence at Westminster Magistrates' Court and only then when he was faced with an overwhelming case against him on that matter.

32 The timing of the complaint about "abuse" while in prison in Hungary is also significant. It came in April 2021, very shortly after the appellant received the judgment of the district judge. The connection is made express on the face of the appellant's second witness statement. I do not accept this can be brushed away on the basis that the appellant had at the time an Article 3 ground for appealing the judgment of the district judge, based on

Hungarian prison conditions – a ground which, as I have said, has been abandoned.

33 The allegation of abuse recorded in the mental health counsellor's letter of 14 April 2021 is also strikingly at odds with a single incidence of rape now relied on. Dr Kretzschmar suggested that this might be explicable but, given my overall concerns with her evidence, I do not accept that this is so. I shall deal with those concerns in due course.

34 The appellant is recorded in the letter of 14 April 2021 as referring to daily abuse from what would appear to be an individual whose name has been redacted. It is, in my view, inconceivable that, if the appellant was referring to an instance or instances of rape or other serious sexual harm perpetrated on him, that this would not have been articulated by the counsellor in the letter of 14 April.

35 I note that the appellant has not been called to give evidence. His account in his witness statements has, therefore, not been tested under cross-examination. There are, in fact, a number of inconsistencies between the appellant's account as recorded in those statements, such as when he stopped communications with his mother, compared with what he told Dr Kretzschmar. I do not accept that these can be explained away, as the doctor attempted to do, in what I consider was an overly defensive position for an expert to adopt in respect of the evidence of a party to proceedings.

36 The vagueness as to the timing of the appellant's account to Dr Kretzschmar of attempting to kill himself by cutting his arms and, allegedly, almost dying is a further reason why the appellant's evidence is, in my view, not credible.

37 These concerns regarding credibility might have been allayed if I had been able to place material weight on Dr Kretzschmar's report. I am, however, unable to do so. This is for a number of reasons. The doctor did not disclose her manuscript notes. Under cross-examination, it became apparent that this failure was based on her mistaken belief that, because she considered nothing of relevance was contained in them, she did not see the need to do so. With respect, that is clearly not right and not in keeping with her obligations as an expert.

38 Secondly, and in my view highly importantly, the interview with the appellant, which resulted in the diagnoses I have described, was conducted entirely over the telephone. We do not know how long the interview took. If such evidence exists, it is to be found in the manuscript notes to which I have made reference; or in the doctor's diary, which she said she uses in this regard.

39 Dr Kretzschmar accepted the fact that the interview was conducted wholly by telephone affected the quality of her report. It meant, amongst other things, that she could not have any regard to the important matters of the appellant's appearance and demeanour. trikingly, she told the court that she would not see fit to prescribe medication to a patient whom she had not met.

40 All of this, in my view, materially affects the weight that can be placed upon her diagnoses of PTSD, depression and anxiety.

41 The failure of Dr Kretzschmar's report to engage with the claimant's medical records is also particularly significant. She apparently saw no need to seek these out. These records would have included the record held by the prison authorities here of the interaction whilst in HMP Wandsworth between the appellant and a doctor, as referenced in the appellant's own

evidence.

42 For all these reasons, I find that the court cannot place any material weight on the report of Dr Kretzschmar. In any event, I agree with Mr Smith that the appellant's reliance upon the case of *Magieria v. District Court of Krakow, Poland* [2017] EWHC 2757 (Admin) is misplaced. *Magiera* does not undermine the dicta in the cases of *Wolkowicz* and *Kowalski*. It may sometimes be the case, as identified in *Magiera,* that particular illnesses or combination of illnesses may be such as to require some form of information from the requesting authority, as opposed to relying upon the presumption that EU States with comply with international human rights obligations. Each case, however, turns on its own facts.

43 In the present case, I agree with Mr Smith that we are firmly within the ambit of the judgment of Sir John Thomas in *Wolkowicz*. I also note that a risk of suicide will often arise in the context of somebody who may have PTSD and/or depression and anxiety. I do not, therefore, find that this is a case where the respondent was required or should be required to provide any form of specific assurance. The presumption is sufficient.

44 For these reasons, the section 25 ground must fail.

45 I turn to Article 8 of the ECHR. In view of my findings in respect of the new evidence and my conclusions on section 25, I agree with the respondent that nothing material has changed since the district judge undertook the Article 8 balancing exercise in March 2021. I accept, as Miss Hill submits, that time has, of course, marched on and that this means, amongst other things, that the appellant's stepdaughter is now in school and that the couple's son is of an age when, if his father is extradited, the son will clearly miss him. Indeed, both children will, no doubt, be distressed to see their father leave, if he is extradited and if their mother decides to remain with them in the United Kingdom, despite her having no ties of any significance with this country. But there is no evidence of either of the children having particular vulnerabilities or needs; and so any separation, though no doubt painful, has not been shown to be likely to have really serious consequences. It is, therefore, not a factor of much weight in favour of the appellant in the Article 8 balancing exercise.

46 The assertion in the appellant's statement that the children would have to enter an orphanage, if he were extradited, is, I consider, an instance of the appellant's predilection for hyperbole. In reality, his partner will be able to seek appropriate assistance from the state, both for herself and the children, if she decides to remain with them in this country.

47 The appellant contends that his offence is not of particular seriousness, viewed through our domestic lens. The case law sanctions, however, against placing too much weight on differences of this kind. That is because the principles underlying extradition emphasise that respect must, at least as a general matter, be afforded to the sentencing policies of other criminal justice systems, barring any serious divergence from an international consensus, where such a consensus exists.

48 In the present case, the appellant was found guilty of dealing in drugs. The fact that Hungary may take a stricter line than this jurisdiction with offences of dealing in relatively small quantities of cannabis is far from putting that country beyond the international pale on punishment for drug offences. Accordingly, whilst the appellant is entitled to some credit in respect of the nature of his offending, it is not of material weight.

49 The appellant points to the delay since the offences were committed. Leaving aside what I have said about time marching on and the effect that this has had on the children, I do not

consider that there is any merit in this aspect. The district judge found at para.41 of her judgment that there had been no significant delay. The fact that two years have elapsed since the hearing in the Westminster Magistrates' Court has been due to the appellant maintaining a challenge to the district judge's decision, which he has now abandoned, and by raising the spectre of suicide and medical issues, which I have already addressed.

50 Added to this is the fact, as I have already said, that the appellant fled Hungary, having persuaded the authorities there to delay the start of his prison sentence. Although part of that sentence has been, in effect, served by his remand in Hungary and by his period of remand here, there is still a significant period left to serve. His curfew condition attached to the grant of bail is not said to be of such a length as would affect any sentence of imprisonment he might receive in this jurisdiction. For these reasons, I therefore give this matter limited weight also.

51 The appellant has worked whilst he has been in the United Kingdom. That is relevant to his private life, which is an aspect of his Article 8 claim; but otherwise there is no evidence of his putting down roots in this country. Miss Hill says in her skeleton argument that the appellant is "committed to a future in the UK, including an application for settled status". It is, however, well established in the Strasbourg jurisprudence that Article 8 is not a means of giving effect to a person's preference as to the country of his or her residence.

52 I afford some weight to the fact that, despite my reservations about the expert evidence, the appellant may have become clinically depressed as a result of the continuing threat of his extradition. That is not, however, a matter which carries any real weight, given that extradition will resolve the present uncertainty and one must in this case rely on the presumption that adequate treatment will be available in Hungary.

53 By the same token, I have not found that the suicide risk is of the nature asserted by the appellant. In any event, reiterating what I have said earlier in the context of section 25, I agree with the respondent that there is no reason why the authorities in Hungary will be unable or unwilling to take appropriate steps to prevent the appellant from killing himself if, contrary to my conclusion, he would otherwise be at risk of doing so.

54 Those then are the factors weighing on the appellant's side of the Article 8 balance. For reasons I have given, they all have limited weight.

55 The factors in favour of extradition remain those set out at para.43 of the district judge's judgment. Those factors substantially outweigh the ones weighing on the appellant's side of the balance.

56 In the circumstances, there is, accordingly, no need for this court to adopt Mr Smith's alternative submission that further assurances might be obtained from the authorities in Hungary.

57 For these reasons, this appeal is dismissed.