



Neutral Citation Number: [2023] EWHC 2898 (Admin)

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

Royal Courts of Justice
Strand, London, WC2A 2LL
Thursday 16th November 2023

Before:
FORDHAM J

Case No: CO/4534/2022
AC-2022-LON-003436

Between:
ATILLA NORBERT LAKATOS **Appellant**
- and -
HUNGARIAN JUDICIAL AUTHORITY **Respondent**

Case No: CO/2163/2023
AC-2023-LON-001815

Between:
ATILLA NORBERT LAKATOS **Appellant**
- and -
HUNGARIAN JUDICIAL AUTHORITY **Respondent**

The **Appellant** in person
The **Respondent** did not appear and was not represented

Hearing date: 16/11/23
Judgment as delivered in open court at the hearing

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.

FORDHAM J

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

FORDHAM J:

Introduction

1. In the first in my series of Nemeth judgments at [2021] EWHC 3366 (Admin) I described (at §2) what the Hungarian prosecutors say is a very serious telephone scam which had taken place in Hungary, but which was run from the United Kingdom. It involved – at that stage – some 220 elderly victims (between the ages of 70 and 96) who, at the hands of some 22 perpetrators, were scammed into handing over large sums of money. That is also the context for these latest cases. In February 2020, DJ Bouch ordered the Appellant’s extradition to Hungary. That was on two accusation Extradition Arrest Warrants. They allege that the Appellant and his partner Anasztasia Horvath had defrauded 12 victims of around £100,000. In October 2021, DJ Godfrey ordered the Appellant’s extradition to Hungary. That was on three accusation Extradition Arrest Warrants. They allege that the couple had defrauded another 53 victims of around £130,000. Both of these cases raised Article 3 arguments. Both raised an Article 8 argument. That was about the family life between the Appellant and Ms Horvath, and the rights of their young son. Prior to Judge Bouch’s judgment in February 2020, the Appellant and Ms Horvath had absconded. In his submissions to me today the Appellant describes that as cutting his tag. The couple were located and arrested in April 2021. The hearing before Judge Godfrey and Judge Godfrey’s judgment came after that. There were then appeals to this Court, but those were withdrawn. That was in June 2022 (case reference CO/3628/2021).

The Heptonstall Appeal

2. Meanwhile, in July 2021, a further accusation Extradition Arrest Warrant was issued against the Appellant. That alleged further frauds in the same scam, committed in February and March 2021. That was during the period when the Appellant was on the run in this country, having cut his tag. That led to an oral hearing on 31 March 2023. It was in front of DJ Heptonstall. The Appellant was present, represented by Counsel, gave oral evidence and relied on various documents. On 12 June 2023 Judge Heptonstall ordered the Appellant’s extradition. Permission to appeal was refused by Julian Knowles J on 27 October 2023. On 30 October 2023 the Appellant’s solicitors emailed the Court saying “we are not renewing”. Those proceedings are case reference CO/2163/2023 and AC-2023-LON-001815. I will call those “the Heptonstall appeal”.

The Robinson Appeal

3. Meanwhile, in November 2022 DJ Robinson ordered the Appellant’s extradition. That was on two January 2022 accusation Extradition Arrest Warrants, issued against the Appellant. These relate to alleged further frauds in the same ongoing scam, committed in December 2020 and January 2021, while on the run. The Appellant was not present at the hearing before Judge Robinson. In refusing permission to appeal on the papers on 28 March 2023, May J recorded that the Appellant had “waived his right to attend his extradition hearing”, in circumstances where Judge Robinson was satisfied that it was in the interests of justice to proceed in his absence; and that there is “rightly no challenge to the hearing having proceeded in that way”. I agree. Those proceedings are Case No: CO/4534/2022 and AC-2022-LON-003436. I will call those “the Robinson appeal”.

Notices of Renewal

4. The Robinson appeal is the subject of a Notice of Renewal dated 4 April 2023. That Notice was filed by the Appellant in person. That was in circumstances where the previous lawyers were coming off the record (as they subsequently did by order of 9 May 2023). Arrangements were made for the listing of the renewal hearing in the Robinson appeal. A hearing was vacated on 15 June 2023 when the Appellant was not produced. The hearing was rescheduled for today. Today's listing was maintained in light of the confirmation of 30 October 2023 of non-renewal of the Heptonstall permission to appeal. It has come to light that, in the Heptonstall appeal, the Appellant's lawyers wrote to him in prison. The letter is dated 30 October 2023. That is the same day as the email to the Court that said "we are not renewing". The Appellant has provided that letter to the Court, by way of an explanation of his position. It contains no privileged content. I am satisfied that I could receive it and can consider it. That letter informed the Appellant that the solicitors could not continue to act. It then told him that he could renew the application for permission to appeal himself. It told him the Court would arrange a video link and interpreter. It told him that if his application to renew was out of time (more than 5 working days after the refusal on the papers), he would need to file a separate application for an extension of time. On 6 November 2023, the Appellant completed an application for an extension of time. He relied on the fact that he only received the renewal form on 4 November 2023, and that he was in custody, without electronic communication access. On the same date, the Appellant completed a Notice of Renewal. They came to the Court by post and came to my attention. I was able to access all the documents in the Heptonstall appeal.

The Position Today

5. Today's hearing was scheduled as the renewal application in the Robinson appeal. It is, however, obvious to me that it is essential that this Court needs to consider the Robinson appeal alongside the Heptonstall appeal, and vice versa. The Robinson appeal advances exactly the same points as are in the Heptonstall appeal. The Notice of Renewal in the Robinson and Heptonstall appeals both raise precisely the same issues. In the Robinson appeal, listed today, the Appellant makes express reference to a feature which is the subject of a September 2022 document which is among the documents in the Heptonstall appeal. The Heptonstall appeal arises out of a hearing at which the Appellant gave oral evidence on the central topic being relied on by him in the Robinson judgment. One possibility today would have been simply to focus on the materials in the Robinson appeal. Another possibility would have been to adjourn both cases. But the only point of that would have been for the Court to issue a notice of hearing listing both cases together. The Appellant is very well aware of both of his cases. In the Heptonstall appeal he is out of time. His application for an extension of time could, in principle, be dealt with as a paper application, in the light of whatever I said in the Robinson appeal. The court has arranged for the video link and interpreter, which is what he was told would happen in the Heptonstall appeal. I explained to the Appellant that if I focused on the Robinson case, he might say to me "but I have a relevant document in the Heptonstall case"; or he might say to me "but I gave oral evidence on this in the Heptonstall case". The Appellant told me that whether I dealt with the cases one by one or looked at them together was for me to do as I saw fit and that he trusted my discretion.

The Way Forward

6. I am quite sure that the appropriate course, in the interests of justice and the public interest, and having regard to the overriding objective, is to deal with both cases, together, today. I told the Appellant that that was my decision and I then heard his representations about the appeals. This approach means I have all the material and can consider the position in the round. I can see no possible prejudice which could legitimately be relied on by or on behalf of the Appellant to this course, recognising that he acts in person. In the circumstances, I grant the extension of time in the Heptonstall appeal, direct that any other steps be dispensed with, and that the renewal application be dealt with at today's hearing. That means I can now proceed with the substance.

Judge Robinson's Decision

7. At the oral hearing before Judge Robinson in his absence, the Appellant's barrister raised Article 3 arguments. It was claimed that he would be imperilled by reason of his Roma ethnicity and his sexual orientation or both. So far as sexual orientation is concerned, a proof of evidence said: "I am also terrified that I will be discriminated again[st] because of my sexual orientation". It added: "During my time in custody, I identified myself as a bisexual person". Judge Robinson rejected that evidence. He described it as wholly implausible. He drew attention to the background of earlier proceedings and the timing. He concluded that the claim was a manufactured one intending to assist the Appellant in resisting his extradition. He went on to find that, in any event, the expert report dated August 2022 of Dr Kadar, relied on on behalf of the Appellant, provided no cogent evidence to counter the presumption that Hungary would afford reasonable protection to the Appellant in relation to any risk arising out of his Roma ethnicity; and that Dr Kadar's report provided no evidence of a systemic failure to protect LGBTQI individuals from Article 3 mistreatment.

Judge Heptonstall's Decision

8. At the oral hearing before Judge Heptonstall, at which the Appellant gave oral evidence and adduced further documents, as well as adducing the same report of Dr Kadar, the same Article 3 arguments were advanced by Counsel on the Appellant's behalf. Judge Heptonstall considered carefully, and independently, the evidence of sexual orientation. He explained the need for care called for, in considering the great difficulty many gay and bisexual men would have, in first accepting their sexual orientation and then expressing it. He referred to the relevant contents of the Equal Treatment Benchbook. He said he had given every possible credit for those matters. But, the Judge said, he simply did not believe the Appellant. Judge Heptonstall explained why this was, by reference to the oral and documentary evidence. He explained why he had no doubt or hesitation, in determining that the Appellant had been thoroughly untruthful. He went on, in any event, to agree with Judge Robinson's analysis of the evidence of Dr Kadar.

Arguments

9. The Appellant maintains the Article 3 points that were argued before both Judge Robinson and Judge Heptonstall. He describes himself as a vulnerable prisoner based on his sexual orientation. The Notices of Renewal also seek to add completely new

Article 8 family life point, based on a same-sex marriage said to be in process. Reliance is placed on a joint letter, apparently signed by the Appellant and his cellmate in September 2022. That was a document placed before Judge Heptonstall and considered by him. The Appellant has told me today that he has told the whole truth about his sexual orientation. The Appellant has also, today, made a number of other points: for example, about prison conditions including overcrowding; about treatment in Hungarian prisons; about the treatment of people of Roma ethnicity; about the approach of the Hungarian courts. He also says that he wants more time, to be able to obtain and attach documents. He says he has lived a law abiding life in the UK, He reminds me of his 4 year old son who is here. He says it was wrong for him to 'cut off his tag' and has said he is sorry about that. He says he only did that because he was being threatened.

Discussion

10. I return to the issues raised in the grounds of appeal. These are Article 3, based on sexual orientation, Roma ethnicity, and the combination of these. As May J explained in March 2023 in the Robinson appeal, and Julian Knowles J explained in October 2023 in the Heptonstall appeal, there is no prospect of any of these arguments succeeding at a substantive hearing in this Court. I entirely agree. In the Robinson appeal, May J said:

In his absence, the only evidence about the applicant's personal circumstances, in particular his sexuality, came from an unsigned proof of evidence. For the reasons which he gave, the Judge concluded that he could place no reliance on that evidence. It is not arguable that he was wrong to reach that conclusion. The Judge accepted that the applicant was a member of the Roma community but it is not arguable that he erred in concluding that the evidence from Dr Kadar failed to establish a systemic failure to protect individuals from that from ill-treatment or discrimination in prison such as to constitute a breach of Article 3.

In the Heptonstall appeal, Julian Knowles J said:

The district Judge found as a fact, having heard live evidence, that the Applicant was lying about being bisexual and that he was not truthful. Similar findings were made in the Applicant's third set of extradition proceedings. This means that all the material about the alleged ill-treatment of, and discrimination against, bisexuals in Hungary that he wishes to rely upon is irrelevant. The proposed new evidence about his asylum claim adds nothing. The Judge said at [22] that, 'Even giving every credit that I can for those factors, I simply did not believe Mr Lakatos ...; and at [23] that: "Though I was urged by Ms Rodio to consider that he had never freely expressed his sexuality previously because of the culture of shame and the difficulty of revealing that whilst in a committed relationship, when I have done so with every allowance possible, it does not cause me any doubt or hesitation in determining that Mr Lakatos was thoroughly untruthful. I find that he has falsely asserted himself to be bisexual as the last refuge to resist his extradition when all other attempts have failed." These findings cannot be realistically challenged on appeal. Further, as the Respondent's Notice rightly says at [32]: "Nonetheless, Dr Kadar provides no evidence whatsoever that the Hungarian State systemically fails to protect bisexual individuals from article 3 mistreatment either generally or within the confines of the criminal justice system. As with his conclusion in relation to Roma, he does not in fact positively assert the same, he simply says that the Applicant's 'fear that he might face inhuman or degrading treatment... on the basis of his bisexuality and might be left without adequate protection from the state authorities has reasonable grounds.'" Hence, even if the Applicant were bisexual, there is no risk of a violation of Article 3.

I agree with them both. The findings and reasoning of Judge Robinson and Judge Heptonstall are unimpeachable.

11. That leaves the new points, raised by the Appellant since he has been acting in person. There is the new Article 8 claim raised in the Notices of Appeal. But the new alleged “family life” arises from the relationship with the cellmate, linked to sexual orientation and the desire to get married. It cannot succeed in the light of the unimpeachable adverse findings of fact and credibility. I add this. There would be no prospect, in any event, of qualified Article 8 rights outweighing the very strong and obvious public interest considerations in support of extradition. So far as the other points are concerned, these have all had a full and fair opportunity to be dealt with, and the cases have been dealt with by the various extradition judges. All relevant papers could be put forward by the Appellant’s lawyers, in the many extradition hearings before those judges. There is no basis for allowing further delay. That includes Article 3 points about prison overcrowding and conditions; Convention rights points about the actions of prison officials, and the courts; the discrimination against persons of Roma ethnicity, and points about treatment of the Appellant’s own family. None of these points, or any of the points raised by the Appellant – old or new – justify reopening any issue, or granting permission to appeal, or granting any adjournment to allow further time. I am quite satisfied that the appropriate course is to dismiss the renewed applications for permission to appeal, in both appeals.

16.11.23