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Case No: CO/1450/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/05/2023

Before:

MR JUSTICE CHAMBERLAIN

- -

Between:

JANOS VIDÁK **Appellant**

- and –

REGIONAL COURT OF BUDAPEST (HUNGARY) **Respondent**

- -
- -

Hannah Hinton (instructed by **Taylor Rose MW**) for the **Appellant**
Hannah Burton (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 4 May 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 10 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1 The appellant Janos Vidák is sought by Hungary pursuant to a European arrest warrant issued on 24 February 2017 and certified on 22 May of that year. The warrant seeks his surrender to serve a sentence of 2 years' imprisonment, of which all but three days remains to be served. The sentence was imposed on 27 February 2014 for 9 offences of theft and damage to property committed in March, April and May 2010, when he was 19 years old. The offences gave rise to a total loss and damage equivalent to more than £18,000.

2 The appellant was arrested pursuant to the warrant on 23 December 2019 and remanded in custody until 23 June 2020, when he was admitted to conditional bail. The conditions included a curfew between 11pm and 6am each day and a requirement to report to a police station 3 times per week. The extradition hearing took place before District Judge Baraitser ("the judge") at Westminster Magistrates' Court on 16 April 2020. Only one bar to extradition was relied on: that extradition would be contrary to Article 8 ECHR and was therefore barred by s. 21 of the Extradition Act 2003 ("the 2003 Act"). The judge rejected that contention and ordered the appellant's extradition.

3 The appellant applied for permission to appeal to this Court on 20 April 2020. On 4 June 2020, his appeal was stayed pending decisions in other cases relevant to another ground which the appellant was pursuing or considering whether to pursue relating to prison conditions in Hungary. The application for permission to appeal was not considered until 21 September 2021, when it was refused by Sir Ross Cranston, sitting as a High Court Judge. The renewed application for permission came before Whipple J, who granted it on 2 November 2021. No transcript of her reasons is available, but counsel informs me that she noted that it was arguable that the appellant's situation had changed in the nearly 19 month period since the extradition hearing. Since then there has been another delay pending a decision in another case on the question whether changes to Hungary's judicial system meant that the respondent was no longer a "judicial authority" for the purposes of s. 2 of the 2003 Act.

4 The substantive appeal was first listed on 9 November 2022 but I vacated that hearing on the basis that it was necessary to investigate whether a limitation period for an offence in the warrant had expired. The case came back, this time before Morris J, on 18 January 2023. On the day before the hearing, the respondent had provided a disclosure note confirming the approach taken in Hungary to counting time spent on an electronically monitored curfew. The appellant made submissions of his own on that question. Both sides made oral submissions, but Morris J adjourned the appeal, requesting the provision of further information by way of answer to ten questions. The appellant was given permission to adduce further expert evidence in response in the form of a report from Dr András Kádár dated 19 March 2023. I have also considered an addendum to that report dated 3 May 2023.

The judge's reasons

5 The judge noted that, apart from the offences that are the subject of the warrant, the appellant had ten convictions between 17 November 2011 and 24 March 2015 for a total of 28 offences.

6 The appellant gave evidence. He confirmed that he had attended his trial on 27 February 2014, when he had pleaded not guilty. He was present when convicted and sentenced to imprisonment. The sentence was not activated immediately because he appealed. However, before the appeal was determined, the appellant left Hungary and came to the UK. At the time of the extradition hearing, he was living in Harlow with his father, sister, her partner and their children. He had lived an honest life in the UK, paying taxes. He had no family connections in Hungary and would have no prospects there given his convictions. He was in a relationship with a Hungarian national who lives in Enfield with her 10-year old son from a previous relationship, to whom the appellant was close. They met every Sunday afternoon.

7 The judge set out the case law on Article 8 in the extradition context: *Norris v USA* [2010] UKSC 9, [2010] 2 AC 487; *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338; and *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551. She undertook a balancing exercise. The judge found that there was no significant culpable delay by the Hungarian authorities either in bringing the proceedings in Hungary or in issuing the warrant. He had left Hungary knowing of his sentence. He was well aware of how the justice system worked and could not assume that the appeal would succeed. Although she did not use the word, it is common ground that the effect of the judge's findings was that the appellant was a fugitive.

8 The factors in favour of extradition were the mutual confidence and respect to be shown to decisions of the judicial authorities of States party to the Framework Decision, the constant and weighty public interest in extradition, the seriousness of the offences (as reflected in the sentence imposed), the fact that the appellant had come to live in the UK knowing that he had been sentenced to a term of imprisonment, the lack of any dependents, the fact that the relationship with his partner was relatively recently established and she was not financially dependent on him and the lack of significant culpable delay on the part of the requesting State.

9 Tending against extradition were the fact that the appellant had lived in the UK since 2014 and until he was remanded in custody had worked in a warehouse, his strong family ties to the UK through his father and sister, his lack of convictions in the UK and the fact that the offences had been committed long ago.

10 The judge found that there was no compelling feature or combination of features which overrode the strong public interest in extradition.

The position today

11 As at the date of the hearing before me, the appellant had spent 6 months on remand in custody and 2 years, 10 months 1 week and 5 days on an electronically monitored 7-hour curfew pending extradition. During that time, he reported to a police station three times per week (i.e. 448 times).

Morris J's questions and the respondent's answers

12 The questions approved by Morris J were as follows:

> *"Home detention*
>
> 1. Please could the text of the provisions of the Criminal Code which relate to crediting pretrial detention and criminal supervision which apply to this case be provided.
>
> 2. Please confirm whether the time spent on electronically monitored curfew in the UK can be deducted from the time remaining to be served in Mr Vidak's case.
>
> 3. If the answer the question 2 is yes, please confirm whether the time spent on curfew in the United Kingdom by Mr Vidak will be deducted from the time remaining to be served and, if so, in what circumstances.
>
> 4. If the time spent on electronically monitored curfew will be deducted in Mr Vidak's case, please confirm how this will be calculated.
>
> *Early release*
>
> 5. Please could the text of the provisions of the Criminal Code which relate to release on parole from fixed-term imprisonment, applicable to this case, be provided.
>
> 6. Please explain the procedure that a sentenced person parole to be considered. For example:
>
> a. Is a sentenced person required to make an application to a parole board, or a court order to be considered for release on parole?
>
> b. Is release on parole automatic once a point in time during the sentence has been reached, or do conditions have to be satisfied before a person is eligible for release?
>
> c. If release on parole is conditional, please explain what these conditions are? Who determines whether parole should be granted?
>
> 7. Please explain what release on parole entails. For example, being released on parole?
>
> 8. Please confirm whether the convicting Court specified Mr Vidak's pursuant to Section 38(1) of the Hungarian Criminal Code?
>
> 9. Please explain whether Mr Vidak will be eligible for release on parole in respect of the 2-year sentence for which he is wanted to serve, taking into account the six months spent in custody and the time spent on curfew.
>
> 10. If Mr Vidak is eligible for release on parole, at what point in his sentence will he be eligible for release? Will release at this point be automatic, or subject to consideration by a court or other decision—making body?"

13 The respondent's reply did not separately answer all of these questions. It set out the Hungarian legal provisions which permit the imposition of measures corresponding to the electronically monitored curfew imposed by the UK authorities, but noted that such measures had not been included in the prison sentence imposed by the Hungarian authorities. It also set out the provisions governing deduction of time spent on remand and release on parole. It continued:

> "Based on the above, in the opinion of the Court, the part over six months cannot be deducted from the sentence.
>
> Releasing someone on parole is never automatic according to Hungarian law. A sentenced person can make an application for parole, but the penitentiary institute will make a decision based upon the conduct and behaviour of the person during the execution of the sentence - on submitting an application for conditional release before the penitentiary judge. The penitentiary judge will make the decision on the release on parole. The judge can order the probation with supervision and prescribe specific rules of conduct for the duration of probation.
>
> The earliest possible release of Mr. Vidak was determined by the competent Court pursuant to §38(1) of the Hungarian Criminal Code. Mr. Vidak could be eligible for release on parole subject to the above mentioned regulations."

The appellant's expert evidence

14 Dr Kádár's report is relevant to two issues: first, whether an electronically monitored curfew counts towards time served and if so to what extent; second whether and when the appellant will be eligible for early release.

15 As to the curfew, Dr Kádár says that "not all types of criminal supervision are deducted from the sentence to be served". The situation is "not clear cut". He describes one case in which, using a procedure known as "simplified extraordinary review", he persuaded a Hungarian court to take account of a curfew served in the UK, a decision which was upheld on appeal to Hungary's highest court. However, it could not be guaranteed that the simplified extraordinary review procedure would be available on the facts of this case or that the interpretation adopted in the case he mentions "can be regarded as standard practice". In his view, however, a 7-hour curfew should give rise to a reduction in the sentence in the ration of 4 days of curfew to one day of sentence.

16 As to early release, Dr Kádár opines that there is a "significant chance" that the appellant will be excluded from the possibility of release on parole because he did not start to serve his sentence on the due date. This depends on whether he was validly called to serve his sentence. Although the information on this point is not clear, the warrant states that "the enforcement unit took multiple measures to enforce the penalty, issued a national arrest warrant on 9 March 2015". On this basis, Dr Kádár concludes that "it seems likely that [the appellant] was called to start to serve his sentence but failed to do so, which makes it likely that he will be excluded from the possibility of parole". The decision on this issue would be made by a penitentiary judge.

17 Determination of the earliest release point is for the sentencing court. Since the judgment of that court is not available, it is unclear whether the appellant would be entitled to release at the half-way point or at some later point. A question about this was drafted for

sending to the respondent judicial authority, but not sent due to an administrative oversight. In those circumstances, both sides agree that the Court should proceed on the basis most favourable to the appellant, namely that – if the early release provisions apply at all – the appellant would be entitled to be considered for early release at the half-way point. However, whether to order early release is a matter for the penitentiary judge, taking into account the behaviour of the convicted person during the sentence, whether he has shown an aspiration to live a law-abiding life and whether the purpose of the punishment can be achieved without continuing deprivation of liberty.

Further evidence from the appellant

18 The appellant applies to adduce a further statement dated 18 January 2023 by way of update on his personal circumstances. It is appropriate to have regard to this evidence, as it deals with matters which have occurred since the judge's decision.

19 The statement explains that the appellant's father died some six months previously. As a result, the appellant has had to support the family more financially. The appellant's mother's diabetes has worsened and so has her mental health. He says that he does not think she would be able to cope without him.

Submissions for the appellant

20 Hannah Hinton for the appellant submits that the judge erred by failing to take into account the facts that the appellant had a fully settled life in the UK, had no convictions or cautions, had been living openly in the UK since his arrival in 2014, had been living an honest and productive life, had strong family ties in the UK and had contributed to society until his arrest pursuant to the warrant. She had also overlooked that there were 9 offences, not 11 and that the previous convictions took place nearly 13 years ago, mostly when he was a teenager. The judge also failed to give weight to the fact that the appellant had spent 6 months in custody, which would have to be deducted from his sentence, or to the impact of the early release provisions.

21 In any event, Ms Hinton invited me to perform the Article 8 balancing exercise for myself, taking into account not only the factors considered by the judge but also the significant new material not available to her. When the balance is considered afresh, the respondent's delay, coupled with the amount of time spent in custody and on electronically monitored curfew, meant that extradition was a disproportionate interference with his private and family life. On Dr Kádár's evidence, the appellant's 1,046 days on a 7-hour curfew was equivalent to 261 days' imprisonment. Deducting the six months in custody and these additional 261 days meant that the total sentence left to serve was only 283 days, which was less than half the outstanding sentence. On the assumption that early release would be granted at the half-way stage, he has already served the time he would be required to serve. Even if release were available at the two-thirds point, he is only 43 days from the point at which early release would be considered.

22 As to delay, Ms Hinton relied on [8(6)] of Lady Hale's judgment in *HH* for the proposition that delay may diminish the public interest in extradition. She relied also on *La Torre v Italy* [2007] EWHC 1370 (Admin), [37], *Nowak v Poland* [2014] EWHC 118 (Admin), [17] and *Oreszczynski v Poland* [2014] EWHC 4346 (Admin), [10], among other authorities.

23 As to the importance of considering time served, Ms Hinton relied on the following authorities:

(a) *Morawski v Poland* [2020] EWHC 228 (Admin), in which Holman J allowed an appeal on Article 8 grounds where the appellant sought to serve a 2 year sentence had served 6 months in custody and spent a significant period on bail subject to a curfew: see [18]-[20]

(b) *Kruk v Poland* [2020] EWHC 620 (Admin), in which Steyn J allowed an appeal on Article 8 grounds where the appellant had served 15 months of a 2 year sentence (which had originally been suspended but then activated) and had serious mental health difficulties: see [23] and [27].

(c) *A v France* [2022] EWHC 3214 (Admin), in which the Divisional Court made clear that the court should consider whether the requested person has served his sentence, because it would be an abuse of the process of the court to seek extradition of a person who has, in effect, served his sentence in full: [33]-[35]. Ms Hinton, however, properly drew attention to the cautionary note at [36] that "where a short period of a sentence remains to be served, surrender would not be disproportionate for that reason alone".

(d) *Dobrowski v Poland* [2023] EWHC 763 (Admin), in which Fordham J at [7] helpfully collected the cases in which Article 8 appeals had previously been allowed when there was a short period of an outstanding sentence left to serve. At [14]-[15], he said that he could properly form the judicial perception that the appellant would have "good prospects" of early release and that early release was "likely" even though it was a decision for the Polish judicial authorities.

24 After the hearing, Ms Hinton drew my attention to *Muizarajs v Latvia* [2022] EWHC 2751, in which Lane J decided that a restriction on liberty imposed as part of a requested person's bail conditions was relevant to the Article 8 balancing exercise, even if the curfew was for less than the 9 hours required for it to be a qualifying curfew under s. 240 of the Criminal Justice Act 2003: see at [21]-[22].

Submissions for the respondent

25 Hannah Burton for the respondent submitted that the judge was correct to conclude that extradition was compatible with Article 8 ECHR. The offending was serious and resulted in a substantial prison sentence. The decisions relied upon were fact-specific.

26 The court should accept the respondent judicial authority's evidence that the curfew does not count towards the appellant's sentence. On that basis, there is almost 1 ½ years left to serve, so the appellant has not reached or come close to reaching the half-way point. In any event, Dr Kádár's evidence was not clear-cut as to whether time spent on curfew will count.

27 It is clear that early release is never automatic. It is a matter for the penitentiary judge. And, as Dr Kádár said, it might not be available at all given that the appellant did not begin his sentence on the due date.

28 A delay of less than 4 years between the commission of the offences and the conviction is hardly excessive. The delay between the sentencing becoming final and the issue of

the warrant was just over 2 years – again, not excessive. There is nothing to suggest the delay was culpable: see by analogy *Wolack v Poland* [2014] EWHC 2278 (Admin), [9]-[10].

29 The appellant's private and family life in the UK, such as it is, was founded on his status as a fugitive from justice. In any event, he is in good health. Although his partner would be emotionally and financially affected, the impact on them does not extend beyond the expected and commonplace consequences of extradition. The updating evidence does not change that.

Discussion

30 Ordinarily, an appellate court can interfere with a decision that extradition is (or is not) a proportionate interference with a requested person's rights under Article 8 ECHR only in limited circumstances: see e.g. *Love v USA* [2018] EWHC 172 (Admin), [2018] 1 WLR 2889, [25]. If the matter fell to be decided on the basis of the materials before the judge alone, there would in my view be no basis for intervention.

31 The starting point was that the appellant had been convicted of multiple offences of theft and property damage in which the loss was equivalent to more than £18,000. Offences of that kind might well have resulted in a moderately substantial immediate prison sentence in this jurisdiction, particularly if – as here – the offender had multiple previous convictions for similar offences. In any event, it was for the Hungarian court to assess the seriousness of the offences; and the sentence of 2 years' immediate custody reflects that court's judgment that these were serious offences. The judge was obliged, as am I, to respect that judgment.

32 On the information before the judge, the appellant had almost 1½ years (i.e. three quarters) of his sentence left to serve. In none of the cases identified in *Dobrowski* in which an Article 8 appeal succeeded did the appellant have anything like that long left to serve. *Morawski*, where the appellant had also served 6 months of a 2 year sentence, is the exception. But, as Ms Burton submitted, decisions which depend on an Article 8 balancing exercise are intensely fact-specific; and Holman J appears to have regarded the facts of *Morawski* (which included a likely impact on the mental health of the appellant's partner) as exceptional.

33 Although the judge did not consider separately the various periods of delay in this case, I do not think this made any material difference to the outcome of her decision. The period between the latest of the offences and the conviction was longer than one would normally expect (3 years and 9 months), but such a delay is certainly not unheard of in this jurisdiction and Ms Hinton confirmed in argument that she could not characterise that delay alone as one for which the respondent was culpable. The period between the date when the conviction became final and the date when the warrant was issued was just over 2 years. That is considerably less than is seen in some extradition cases. It should also be borne in mind that, on the appellant's own evidence, he left the jurisdiction without telling the authorities, knowing of the sentence. Moreover, according to the warrant, the respondent judicial authority attempted on multiple occasions to enforce the sentence, including by issuing a national arrest warrant in March 2015. In those circumstances it is impossible to stigmatise the delay in issuing the warrant as unreasonable. It was not suggested that the appellant could rely on any delay in executing the warrant. In my judgment, he also cannot legitimately rely on the delay since the

extradition proceedings began (occasioned by the appellant's decision to take two points on appeal, both of which have now been abandoned), although he is entitled to point to aspects of his personal circumstances which have changed during that period.

34 The judge took into account the considerable impact that extradition was likely to have on the appellant, who had made his life here and lived in accordance with the law. However, against that, she bore in mind that he had done so as a fugitive from justice, knowing that he faced a prison sentence which he had not served. The judge also took into account the likely impact of extradition on the appellant's partner, her son and his wider family. These impacts were significant but they were not out of the ordinary in the extradition context.

35 The judge directed herself properly on the law. On the material before her, it is impossible to characterise her decision as wrong in the sense identified in *Love*.

36 Matters have now moved on: that, indeed, was the premise for Whipple J's grant of permission to appeal. Both counsel agree that this means that I have to undertake the Article 8 balancing exercise afresh, on the basis of the facts found by the judge and also those disclosed by the later material.

37 I begin with the question whether the curfew falls to be taken into account in calculating the amount of time to be deducted from the sentence. Article 26(1) of the Framework Decision 2022/584 requires the issuing Member State to "deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed". But the Court of Justice of the EU has confirmed that the only periods required to be deducted under this provision are ones during which the requested person has been deprived of his liberty. Periods during which he has merely been subject to a measure which restricts liberty do not count (Case C-294/16 PPU *JZ v Prokuratura Rejonowa Łódź – Śródmieście* ECLI:EU:C:2016:610, [45]) and a nine-hour curfew, together with a requirement to report to police, did not amount to a deprivation of liberty: ibid, [54].

38 This means that Member States are free to decide for themselves whether to be "more generous" and provide that a person subject in the executing state to a curfew not amounting to a deprivation of liberty should on that account receive a reduction in the sentence served in the requesting state: *Marosan v Romania* [2021] EWHC 3098 (Admin), [2022] 1 WLR 1759, [6].

39 On the question whether Hungary has chosen to be more generous in this respect, there is clear evidence from the respondent judicial authority that no period beyond the six months served in custody would fall to be deducted. I pause at this stage to note that it would not be surprising if this were the case: in this jurisdiction a curfew of less than nine hours would not give rise to deduction from the sentence as of right (see s. 240A of the Criminal Justice Act 2003), though the fact that an offender had been subject to such a curfew could be relevant to sentence in the first place.

40 This case is therefore quite different from *A v France* and *Marosan*, where the respondent judicial authority had said nothing about whether the appellant had served his sentence. Here, the respondent judicial authority has said something very clear about that: he has not. Does Dr Kádár's evidence enable me to reach a contrary view? The terms of his evidence suggest a negative answer. Dr Kádár himself considers that "not all types of

criminal supervision are deducted from the sentence to be served" and that the situation is "not clear cut". Although he describes one case in which the court was persuaded to take into account time served on an equivalent curfew, he properly adds that he cannot say whether this case "can be regarded as standard practice" and expresses a particular doubt about whether the procedural device used in the one case of which he is aware would be available here. The evidence is not sufficiently clear to enable me to reach a finding about Hungarian law that is directly contrary to the express view of the Hungarian judicial authority.

41 I must therefore proceed on the basis that the appellant has no entitlement to have the time spent on bail in this jurisdiction deducted from his sentence in Hungary. I note, however, that, even if Dr Kádár's view were accepted, the appellant would still have nearly 9 ½ months to serve.

42 Next, I consider whether this is a case in which I can proceed on the basis that the appellant would benefit from the early release provisions. In my view, that too is impossible. There are two problems. The first arises from Dr Kádár's own evidence: the early release provisions may well not apply at all, because the appellant did not begin his sentence on the due date. Although the respondent has not filed specific evidence on this point, the combination of Dr Kádár's evidence that this is the "likely" position, taken with the statement in the warrant that national enforcement measures were taken, makes it impossible to conclude that the early release provisions do apply. Even if they do, it is common ground that early release depends on an exercise of discretion (or judgment) by the penitentiary judge. It is possible that that judge might take into account the fact that the appellant was a fugitive from justice and, in that case, the outcome is hard to predict.

43 All this means that, unlike in some of the other cases to which my attention was drawn, there is no sound basis on which to assume that the appellant has actually or in effect served his sentence.

44 This does not exhaust the potential relevance of either the curfew or the early release provisions. The appellant is entitled to invite me to bear in mind that (i) he has served 6 months in custody, (ii) he has been on conditional bail including a 7-hour curfew with police reporting conditions for a further 2 years, 10 months, 1 week and 5 days and (iii) he may have an entitlement to apply for early release at the half-way point. These factors are relevant to the weight to be accorded to the public interest in extradition. So too are the fact that these offences are now nearly 13 years old, that the appellant has not offended since he came to this country, that he has close family ties in this jurisdiction and that his partner and her son depend on him emotionally and financially.

45 But in my judgment these factors, taken together, are insufficient to outweigh the public interest in extradition, given: the seriousness of the offences (as reflected in the value of the items stolen and damage done and the Hungarian court's judgment that an immediate sentence of 2 years' imprisonment was required); the fact that the appellant's family life was established at a time when he was a fugitive from justice; and the need, given the trust and respect owed to the Hungarian court, to leave to that court the question whether the appellant should be released early.

Conclusion

46 For these reasons, the appeal will be dismissed.