Neutral Citation Number: [2023] EWHC 2404 (Admin)

Case No: CO/4641/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/10/2023

**Before** :

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

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| **TIBOR JOZSA** | **Appellant** |
| **- and -** | |
| **TRIBUNAL OF SZEKESFEHERVAR, HUNGARY** | **Respondent** |

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**Catherine Brown** (instructed by **Sonn Macmillan Walker**) for the **Appellant**
**David Ball** (instructed by **CPS**) for the **Respondent**

Hearing date: 18 January 2023

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 10 October 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 Julian Knowles:**

**Introduction**

1. This is an appeal with permission (granted by myself, as it happens) against the judgment of District Judge Goozée dated 20 November 2019 ordering the Appellant's extradition to Hungary.

2. The Appellant was arrested before 11pm on 31 December 2020 and so the Extradition Act 2003 (EA 2003) in its unamended form and the Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member states of the European Union (the EAW Framework Decision) continue to apply: see *Zabolotnyi v Mateszalka District Court, Hungary* [2021] 1 WLR 2569, [2]-[3]; *R (Polakowski) v Westminster Magistrates' Court* [2021] 1 WLR 2521, [19]-[24], [32].

3. This case has a long history:

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| 6 August 2015 | Date of the assault detailed in the European Arrest Warrant (EAW) on which return is now sought (EAW 1). |
| c.2016 | Appellant came to UK; Hungarian proceedings still ongoing. |
| 14 November 2017 | Appellant convicted of assault in Hungary and sentenced to one year of imprisonment (this decision became final on 13 December 2018 following the decision of the Szekesfehervar Regional Court). |
| 11 August 2019 | Appellant arrested in the UK in respect of the original version of EAW 1 (that version was issued in error as an accusation EAW, see [4] of the District Judge's judgment). The Appellant was discharged in respect of that accusation EAW on the morning of the full extradition hearing (see below). |
| 12 August 2019 | The initial hearing took place. The Appellant did not raise issues pursuant to ss 4 or 7 of the EA 2003. He did not consent to his extradition. The proceedings were formally opened and the Appellant was remanded in custody. |
| 22 October 2019 | The final extradition hearing was listed before District Judge Goozée. It was brought to his attention that the EAW had been incorrectly issued as an accusation warrant. Consequently, he adjourned the extradition hearing in order for this issue to be resolved (judgment at [15]) |

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| 30 October 2019 | The current version of the EAW issued in Hungary. |
| 6 November 2019 | Current version of EAW 1 certified. The Appellant was arrested at court pursuant to it. The initial hearing took place, preliminary issues were resolved and the Appellant was discharged in respect of the original version of the EAW. The extradition hearing took place. The Appellant raised the following issues in opposition to his extradition: s 20; Article 3 of the European Convention on Human Rights (ECHR); and Article 8. |
| 20 November 2019 | Appellant's extradition ordered by District Judge Goozée. |
| 25 November 2019 | Appellant's Notice filed and served. |
| 5 April 2020 | Appellant granted conditional bail.<br><br>The Appellant's case was stayed behind *Zabolotnyi*. Following the hand down of judgment in that case on 30 April 2021, the Appellant was asked to confirm whether he maintained the Article 3 argument. |
| 10 December 2021 | Decision of Sir Ross Cranston which stayed the s 2/Article 6 ECHR (rule of law) ground of appeal behind *Bogdan v Judge of Law Enforcement at Veszprem Regional Court, Hungary* [2022] EWHC 1149 (Admin) and refused permission to appeal in respect of Article 8 ECHR and proportionality pursuant to section 21A of the 2003 Act. |
| 16 December 2021 | The renewal application was lodged and the decision from Dr Tamas Racz, Head of the Traffic Police Division of 13 December 20215 relating to the discontinuance of the prosecution relating to a second EAW with reference 33.Bny.625/2017/2 (EAW 2) was served (see below re the offences on EAW 2). |
| 22 March 2022 | The Hungarian Ministry of Justice (MOJ) wrote to the CPS to state that the withdrawal of EAW 2 was proposed. Furthermore, the MOJ sought clarification as to whether the Appellant had been held in detention or under house arrest beyond the period 11 August 2019 to 15 April 2020. |

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| 29 March 2022 | MOJ provided a further response from the Respondent which stated that the Appellant had served the 'minimum period for being released on parole' but that release on parole 'may be allowed only by the penitentiary judge based on the submission of the penitentiary institute being the place of detention in Hungary. Consequently, the request for the Appellant's extradition was maintained. |
| 30 March 2022 | The Respondent stated that EAW 2 was to be withdrawn, and he was subsequently discharged in respect of that warrant. |
| 12 April 2022 | Permission to appeal was granted by Julian Knowles J in respect of Article 8 ECHR on EAW 1. |
| 18 May 2022 | Judgment handed down in *Bogdan*. |

4. Both of the appeals behind which this case was stayed were resolved adversely to the defendants. Hence, the only issue now outstanding is whether extradition would be a disproportionate interference with the Appellant's rights under Article 8 of the ECHR, and so barred by s 21 of the EA 2003.

**The facts**

5. EAW 1, on which the Appellant's extradition is sought, has the reference Szv 1132/2018. It concerns an offence of assault.

6. The offence was committed on 6 August 2015 when the Appellant got into an argument in a pub with the complainant. The Appellant was intoxicated. After the complainant left the pub, the Appellant followed him with another (unidentified) person, caught up with him, and punched him to the ground. The Appellant's accomplice then kicked the complainant on the floor, whilst the Appellant punched him to the face several more times.

7. The complainant suffering fractured ribs and a dislocation and contusion of his jaw, the injuries taking more than eight days to heal. The Framework list for grievous bodily injury has been ticked.

8. On any view this was a nasty assault, although – at least to English eyes – the sentence might appear to have been comparatively lenient.

9. The Appellant was arrested and questioned about the assault. He admitted it. He was told that he would have to go to court. He did not do so. He came to the UK in 2016 whilst the proceedings were still ongoing in Hungary. The district judge therefore found him to be a fugitive on the basis that by leaving Hungary he had deliberately placed himself beyond the reach of the Hungarian authorities (at [49]). The district judge disbelieved much of the Appellant's

evidence about what he had done and why (eg, that he had had contact with the Hungarian authorities). Realistically, before me Ms Brown on behalf of the Appellant did not challenge the finding that the Appellant is a fugitive.

10. The Appellant was convicted by Szekesfehervar District Court on 14 November 2017. He appealed, however the conviction was upheld by Szekesfehervar Regional Court on 13 December 2018 and the conviction became final on that date.

11. EAW 2 contained an allegation of an offence against transport security and another allegation of harassment. It was alleged that the Appellant had intentionally endangered life by pulling on the handbrake and trying to pull out the ignition key whilst he was travelling in a moving car and then also threatened to kill the woman driver and her family. These carried maximum sentences of 3 years and 2 years respectively. That warrant was withdrawn in March 2022.

**The common ground**

12. A number of things are common ground.

13. Firstly, the Appellant spent eight months on remand in custody in the UK between his arrest in August 2019 and his release on bail in April 2020. (Unusually, he was released on bail after the extradition order had been made because of concerns about his mental health). That time will fall to be deducted from the one year sentence of imprisonment in Hungary. Hence, there will be a maximum of about four months of his sentence left to serve if he is extradited.

14. Second, given that comparatively short period, he will be able to apply to a Hungarian judge (known as a 'penitentiary judge') immediately on his return for parole, and so may not actually serve any time at all. However, Further Information from Hungary dated 29 March 2022 makes clear that that application has to be made once he is back in Hungary.

15. Third, significant time has passed since he was released on bail during which his liberty has been significantly restricted because he has been subject to an electronically monitored curfew from 7pm – 7am every day.

16. Fourth, at the time of the district judge's decision, and when the single judge refused permission on the papers, EAW 2 was extant. It was relied on by the district judge and the single judge as an additional reason for rejecting the Appellant's Article 8 argument besides the assault offence. However, that warrant has now been withdrawn, the Appellant no longer faces extradition in respect of it, and so the position has changed in that respect.

**The test on appeal**

17. I can only allow the appeal if the district judge should have discharged the Appellant under Article 8: see s 27(3), EA 2003.

18. The matters I set out earlier mean that the question for me is not whether the district judge was wrong, which is the general test on appeal: see *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [22]-[26]. Given this is a change of circumstances/fresh evidence case, I have to make my own assessment *de novo*, on the material as it now stands, in order to determine whether extradition would be a disproportionate interference with the Appellant's Article 8 rights, according to the well-known principles established in *Norris v Government of the USA (No 2)* [2010] 2 AC 487; *H(H) v Italy Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338; and *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551. I do not go through the rather artificial exercise of trying to determine what the district judge should have decided if he had had the material now available to me, even though in November 2019 it did not exist.

19. The *de novo* test in fresh evidence cases is established by decisions such as *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26] and *Versluis v The Public Prosecutor's Office in Zwolle-Lelystad, The Netherlands* [2019] EWHC 764 (Admin), [79]; and *De Zorzi v Attorney General Appeal Court of Paris* [2019] 1 WLR 6249, [66].

20. Mr Ball for the Respondent very fairly acknowledged that circumstances had changed since the date of the district judge's decision (in particular, the withdrawal of EAW 2), and that I was required to make my own Article 8 assessment.

21. I will deal with the test under Article 8 later. For now, it suffices to say that the Appellant must show that extradition would be a disproportionate interference with his rights under Article 8(1) of the ECHR.

**Submissions**

*The Appellant's submissions*

22. The Appellant's original proof of evidence dates back to October 2019. He has provided two updated proofs of evidence dated 29 March 2022 and 10 January 2023 which contain details of the developments since the extradition hearing and his release from custody. It is said this evidence was not available at the extradition hearing as it is updating evidence. It is also contended that had that evidence been before the district judge, it would have been decisive in respect of the Article 8 balancing exercise and I should admit it: *Szombathely City Court v Fenyvesi* [2009] 4 All ER 324, [35].

23. Although before me Ms Brown made various criticisms of the district judge's approach to Article 8, eg, that he had not given sufficient weight to certain factors, these can be put to one side because I have to decide the Article 8 issue for myself. In any event, criticisms about weight being wrongly attributed to this or that factor are generally not sufficient to found a successful appeal to this court: see *Love*, [25]-[26].

24. Ms Brown relied on the following factors as showing that extradition would be a disproportionate interference with the Appellant's Article 8(1) rights: (a) his mental health; (b) his settled family life here and the financial contribution which he makes; (c) his settled employment here; (d) time served on remand here from August 2019 to April 2020, which will count towards his 12 month sentence in Hungary and once back in Hungary he could apply for release so that he may not spend any time in prison; (e) withdrawal of EAW 2, which the district judge and Sir Ross Cranston had relied upon in support of their conclusion that extradition would not be disproportionate; (f) time spent on curfew from 7pm – 7am since his release on conditional bail.

*The Respondent's submissions*

25. On behalf of the Respondent, Mr Ball submitted as follows.

26. Whilst acknowledging that there has been a change in circumstances since the district judge's decision in November 2019, which requires a re-assessment of the Article 8 issue by me *de novo*, Mr Ball submitted that extradition remained proportionate, and hence that I should dismiss the appeal.

27. He relied on: (a) that this was a nasty assault, (b) it caused grievous bodily harm; (c) the Appellant is a fugitive; (d) the private and family life he now relies on were built up in the knowledge that matters might catch up with him; (e) he has gone on to commit a violent offence in the UK; (f) he has committed two other offences in Hungary; (g) four months is still a lengthy period of time; and (h) it should be left to the Hungarians whether he is required to serve his remaining sentence in full via the penitentiary judge mechanism.

**Discussion**

28. Article 8 of the ECHR provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

29. I accept that the Appellant has lived in the UK since 2016, and for most of that time with his partner and nephew, and that he has established a family life here, which extradition would interfere with. There are other family members in the UK as well. The question, therefore, on well-understood principles, is whether extradition would be a disproportionate interference with that right. If it would be, then extradition is barred by s 21 of the EA 2003.

30. The approach to disproportionality and Article 8 in the extradition context was explained in *H(H) v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338 by Baroness Hale at [8]:

> "8. We can, therefore, draw the following conclusions from *Norris*: (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition (4) There is a constant and weighty public interest in extradition that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no 'safe havens' to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

31. In *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551], [5]-[14], the Lord Chief Justice said:

> "5. The general principles in relation to the application of Article 8 in the context of extradition proceedings are set out in two decisions of the Supreme Court: *Norris v Government of the USA (No.2)* [2010] UKSC 9, [2010] 2 AC 487 and *HH*.
>
> 6. In *HH* Baroness Hale summarised the effect of the decision in *Norris* at paragraph 8; in subparagraphs (3) (4) and (5), she made clear that the question raised under Article 8 was whether the interference with private and family life of the person whose extradition was sought was outweighed by the public interest in extradition. There was a constant and weighty public interest in extradition that those accused of crimes should be brought to trial; that those convicted of crimes should serve their sentences;

that the UK should honour its international obligations and the UK should not become a safe haven. That public interest would always carry great weight, but the weight varied according to the nature and seriousness of the crime involved. This was again emphasised by Baroness Hale at paragraph 31, by Lord Judge at paragraph 111 (where he set out a number of passages to this effect from *Norris)* and at paragraph 121, Lord Kerr at paragraph 141; Lord Wilson at paragraphs 161-2 and 167.

7. It is clear from our consideration of these appeals that it is important that the judge in the extradition hearing bears in mind, when applying the principles set out in *Norris* and *HH*, a number of matters.

8. First, *HH* concerned three cases each of which involved the interests of children: see in particular the judgment of Baroness Hale at paragraphs 9-15, 24-25, 33-34, 44-48, 67-79, 82-86; Lord Mance at paragraphs 98-101; Lord Judge at paragraphs 113-117, 123-132; Lord Kerr at paragraphs 144-146; Lord Wilson at paragraphs 153-156 and 170. The judgments must be read in that context.

9. Second the public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice. We would expect a judge to address these factors expressly in the reasoned judgment.

10. Third the decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect. Part I of the 2003 Act gave effect to the European Framework Decision of 13 June 2002; it replaced the system of requests for extradition by Governments (of which the judicial review before the court in respect of the Polish national is a surviving illustration). The arrangements under Part I of the 2003 Act operate between judicial authorities without any intervention of governments. In applying the principles to requests by judicial authorities within the European Union, it is essential therefore to bear in mind that the procedures under Part I (reflecting the Framework Decision) are based on principles of mutual confidence and respect between the judicial authorities of the Member States of the European Union. As the UK has been subject to the jurisdiction of the CJEU since 1 December 2014, it is important for the courts of England and Wales to have regard to the jurisprudence of that court on the Framework Decision and the importance of mutual confidence and respect.

11. Fourth, decisions on whether to prosecute an offender in England and Wales are on constitutional principles ordinarily matters for the independent decision of the prosecutor save in circumstances set out in authorities such as *A (RJ)* [2012] 2 Cr App R 8, [2012] EWCA Crim 434; challenges to those decisions are generally only permissible in the pre-trial criminal proceedings or the trial itself. The independence of prosecutorial decisions must be borne in mind when considering issues under Article 8.

12. Fifth, factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will take into account; it is therefore important in an accusation EAW for the judge at the extradition hearing to bear that in mind. Although personal factors relating to family life will be factors to be brought into the balance under Article 8, the judge must also take into account that these will also form part of the matters considered by the court in the requesting state in the event of conviction.

13. Sixth in relation to conviction appeals:

i) The judge at the extradition hearing will seldom have the detailed knowledge of the proceedings or of the background or previous offending history of the offender which the sentencing judge had before him.

ii) Each Member State is entitled to set its own sentencing regime and levels of sentence. Provided it is in accordance with the Convention, it is not for a UK judge to second guess that policy. The prevalence and significance of certain types of offending are matters for the requesting state and judiciary to decide; currency conversions may tell little of the real monetary value of items stolen or of sums defrauded. For example, if a state has a sentencing regime under which suspended sentences are passed on conditions such as regular reporting and such a regime results in such sentences being passed much more readily than the UK, then a court in the UK should respect the importance to courts in that state of seeking to enforce non-compliance with the terms of a suspended sentence.

iii) It will therefore rarely be appropriate for the court in the UK to consider whether the sentence was very significantly different from what a UK court would have imposed, let alone to approach extradition issues by substituting its own view of what the appropriate sentence should have been. As Lord Hope said in *HH* at paragraph

95 in relation to the appeal in the case of PH, a conviction EAW:

> ‘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.’

Lord Judge made clear at paragraph 132, again when dealing with the position of children, that:

> ‘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 non-custodial sentence (including a suspended sentence).’

14. It is also clear, as some of these appeals illustrate:

i) The basic principles to which we have referred have not always been taken properly into account at the extradition hearing.

ii) A structured approach has not always been applied to the balancing of the factors under Article 8. This is essential, because each case turns on the facts as found by

the judge and the balancing of the considerations set out in *Norris* and *HH*. We suggest at paragraph 15 below, an approach which would fulfil this requirement.

iii) Decisions of the Administrative Court in relation to Article 8 are often cited to the court. It should, in our view, rarely, if ever, be necessary to cite to the court hearing the extradition proceedings or on an appeal decisions on Article 8 which are made in other cases, as these are invariably fact specific and in individual cases judges of the Administrative Court are not laying down new principles. Many such cases were referred to in the skeleton arguments. We have referred to none of them in this judgment, as the principles to be applied are those set out in *Norris* and *HH*. If further guidance on the application of the principles is needed, such guidance will be given by a specially constituted Divisional Court or on appeal to the Supreme Court. It is not helpful to the proper conduct of extradition proceedings that the current practice of citation of authorities other than *Norris* and *HH* is continued either in the extradition hearing or on appeal."

32. He added at [15]-[17]:

"15. As we have indicated, it is important in our view that judges hearing cases where reliance is placed on Article 8 adopt an approach which clearly sets out an analysis of the facts as found and contains in succinct and clear terms adequate reasoning for the conclusion arrived at by balancing the necessary considerations.

16. The approach should be one where the judge, after finding the facts, ordinarily sets out each of the 'pros' and 'cons' in what has aptly been described as a 'balance sheet' in some of the cases concerning issues of Article 8 which have arisen in the context of care order or adoption: see the cases cited at paragraphs 30 to 44 of *Re B-S (Adoption: Application of s.47(5))* [2013] EWCA Civ 1146. The judge should then, having set out the 'pros' and 'cons' in the 'balance sheet' approach, set out his reasoned conclusions as to why extradition should be ordered or the defendant discharged.

17. We would therefore hope that the judge would list the factors that favoured extradition and then the factors that militated against extradition. The judge would then, on the basis of the identification of the relevant factors, set out his/her conclusion as the result of balancing those factors with reasoning to support that conclusion. As appeals in these cases are, for the reasons we shall examine,

> common, such an approach is of the greatest assistance to an appellate court."

33. In this case, as I am deciding the Article 8 issue for myself, I must adopt this check list approach.

34. The factors in favour of extradition are as follows.

35. Firstly, the generally applicable strong public interest in this country honouring its extradition arrangements with other countries, in order to ensure that those convicted of offences are returned for trial or (as in this case) to serve their lawful sentences.

36. Second, the Appellant is a fugitive. He left Hungary before the end of proceedings there and so deliberately put himself beyond the reach of the Hungarian judicial system. This is a strong factor in favour of extradition. It was referred to twice by the Lord Chief Justice in *Celinski* (at [9] and [48(ii)]) as well as by Baroness Hale in *H(H)* at [8(4)].

37. Third, the Appellant's offence was a nasty assault which left the victim with fairly significant injuries.

38. Fourth, as things stand at present, the Appellant has four months imprisonment left to serve in Hungary. I will say more about this in a moment.

39. Next, the Appellant has other convictions in Hungary. On 30 January 2014 he received a six month suspended sentence for drink driving, and on 21 October 2016 he was fined for fraud, which was converted to 200 days imprisonment on 13 April 2017.

40. Next, the Appellant offended after his arrival in this country. In May 2017 he pleaded guilty at Central London Magistrates Court to battery (committed in January 2017) and was sentenced to a community order.

41. The factors against extradition are as follows.

42. Firstly, the Appellant has mental health issues. He suffered from panic attacks and other problems whilst in prison on remand for this matter, which led to his release on conditional bail in April 2020. He takes medication.

43. Second, he has a settled family life with his partner in this country. He works, pays tax, and supports his family financially. Extradition would impact upon his ability to do so.

44. Next, the offence was committed some time ago.

45. Next, he only has four months left to serve and may be released before the end of that period if the penitentiary judge in Hungary so orders.

46. As for the withdrawal of EAW 2, that is not a factor against extradition as such, but its absence means that one factor formerly present in favour of extradition has been removed. The question still remains whether, on the existing factors, extradition would be disproportionate.

47. I turn to my conclusions.

48. If the Appellant had not fled Hungary, and so avoided being punished for his offence, then he would be in a stronger position now to argue disproportionality than the position he is actually in. As I have said, his fugitivity is a strong factor in favour of extradition.

49. His offence was a serious assault which left his victim with non-trivial injuries. He committed a further offence of violence a fairly short time after arriving in the UK.

50. Perhaps the *prima facie* strongest factor against extradition is the comparatively short period of time which the Appellant has left to serve in Hungary. However, there have been cases where return to serve even shorter periods have been held to be proportionate. Each case turns on its own merits, but as Fordham J said in *Koc v Turkish Judicial Authority* [2021] EWHC 1234 (Admin), [28], there is merit in 'working illustrations', although at the same time, 'individualised fact-specific applications of legal principle must never be mistaken as having the force or influence of precedent'.

51. So, in *Malar v Slovakia* [2018] EWHC 2589 (Admin), [13], Supperstone J said:

> "I agree with Ms Lindfield that there is nothing inherently disproportionate in the surrender of the appellant to serve a sentence that amounts to weeks rather than months. I do not accept that, having regard to the factors in favour of extradition and to the factors which may militate against extradition, when conducting the balancing exercise in this case, that the extradition of the appellant to serve a sentence, albeit that it now amounts to weeks rather than months, is disproportionate."

52. In *Ostrzycki v Regional Court of Suwalki, Poland* [2020] EWHC 1634 (Admin), [34], Lewis J said:

> "So far as the specific criticisms made are concerned, the position is this. The appellant had been convicted of a serious offence and sentenced to a significant custodial sentence of 18 months. The fact that the appellant had served 14 months of that sentence, and that there were only four months remaining, does not undermine the public interest in extradition. In *Kasprazak* [v *Warsaw Regional Court* [2010] EWHC 2966 (Admin)], McCombe J., as he then was, accepted that "in certain circumstances the fact that a very short period of time remains to be

> served may be a circumstance to be taken into account" (see paragraph 21). That, however, was emphasised to be one factor alone. McCombe J. emphasised that other factors had to be borne in mind. They included the fact that it was not for the courts of this country to second guess the sentences passed by other states and also the seriousness of the offence. In that case, the sentence imposed was 1 year and three months and the period already spent in custody was 11 months leaving four months left to serve in custody. McCombe J. held that the length of the sentence left to be served did not affect the balance of proportionality. In my judgment, the same applies in this case. The appellant was convicted of a serious offence and was sentenced to 18 months' imprisonment. The fact is that four months remains to be served. There is a high public interest in honouring extradition arrangements and that public interest is not diminished by reason of the length of time left to be served in custody.

53. In *Molik v Judicial Authority of Poland* [2020] EWHC 2836 (Admin), [11] a period of six weeks left to serve was found by Fordham J not to fall within the category of a ‘very short period of time’:

> “The fact that the Appellant has the period left to be served of 6 weeks does not in my judgment fall within the category described in the authorities, deliberately, as ‘a very short period of time’: see *Kasprzak* at paragraph 21 and the subsequent cases quoting and endorsing that approach. The Court considering Article 8 proportionality must, in principle, respect the time left to be served and which is required, by the requesting state authorities, to be served there: see *Kasprzak* again at paragraph 21 ("If a sentence has been passed this court should take the view that the sentence is, all things being equal, to be served’) and *Ostrzycki* at paragraph 34 (‘There is a high public interest in honouring extradition arrangements and that public interest is not diminished by reason of the length of time left to be served in custody"). The court does not evaluate whether sufficient time has been served: see *Kloska* [[2011] EWHC 1647 (Admin)] paragraph 27 (‘except in most unusual circumstances, it cannot be for the courts in England to form a view on whether the person to be extradited has or has not served enough of his sentence that was imposed by the requesting judicial authority’) and *Zakrzewski* [[2012] EWHC 173 (Admin)] at paragraph 48. This is not a case like *Jesionowski* [[2014] EWHC 319 (Admin)] where, although there was still a month of an eight-month sentence to be served, the Court was satisfied that early release provisions applicable

> in the requesting state would irresistibly have been applied to entitle the appellant to immediate release upon return: see paragraph 19. I accept that all cases are fact sensitive and that the threshold is only reasonable arguability. But, in my judgment, a reliable illustrative working example is the case of *Malar:* see paragraph 13. In that case Supperstone J explained that 'there is nothing inherently disproportionate in the surrender of the appellant to serve a sentence that amounts to weeks rather than months'. On the facts of that case the appellant had served 4 months 1 week and 2 days of a 5 month term. His extradition was held to be proportionate and article 8 compatible. That conclusion does not drive the conclusion in the present case, but it serves to illustrate and reinforce the points made about mutual respect and "a very short period" being capable of being a factor (*Kasprzak* paragraph 21).

54. Having regard to these principles and examples, therefore, I am unable to attach that much weight to the outstanding period of four months which the Appellant has left to serve. As for the possibility that the penitentiary judge may release him early, so that he may not be required to serve some or all of that period, it is just that: a possibility. I do not know what that judge will make of the fact that the Appellant fled Hungary, and was convicted subsequently in both Hungary and this country, including for an offence of violence, but I doubt they will count in the Appellant's favour.

55. I do not underplay the Appellant's mental health issues, but in the absence of medical evidence (a point which the district judge noted, and none has been forthcoming since even though four years have now passed since then) again, I am unable to attach too much weight to this factor. I can assume that the Hungarian prison system will afford the Appellant the care that he needs.

56. As for the curfew, this can play a part in the Article 8 calculus even where no period falls to be deducted from the time to be served (as can happen in the UK): see eg *Hojden v. District Court, Gorzow, Wielkopolski, Poland* [2022] EWHC 2725, [49]-[50]. However, as Mr Ball pointed out, there is no evidence that the Appellant's curfew has had any particularly deleterious impact on his work or family life requiring me to take it into account.

57. Finally, I accept that the Appellant's extradition will impact on his family life and his ability to provide financially for his family, however that is a common feature of extradition.

58. Taking all matters together, even with the change in circumstances since November 2019, I have come to the conclusion that in this case there is not the sort of exceptionally severe impact on the Appellant's Article 8(1) rights which would mean that extradition would be disproportionate.

**Conclusion**

59. This appeal is therefore dismissed.