



Neutral Citation Number: [2024] EWHC 2152 (Admin)

Case No: AC-2023-LON-000489

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Friday 16th June 2024

Before :

THE HONOURABLE MR JUSTICE DOVE

Between :

IZABELLA BARACZ

Appellant

- and -

HUNGARIAN JUDICIAL AUTHORITY

Respondent

Mr George Hepburne Scott (instructed by **Criminal Defence Solicitors**) for the **Appellant**
Ms Georgia Beatty (instructed by **CPS**) for the **Respondent**

Hearing dates: 10th July 2024

Approved Judgment

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

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THE HONOURABLE MR JUSTICE DOVE

Mr Justice Dove :

1. The appellant in this case is wanted under two warrants which are as follows. Warrant 1 is a European Arrest Warrant (“EAW”) which was issued by the requesting authorities on 21st August 2019 and was certified by the NCA on 29th September 2020. Warrant 1 is an accusation warrant and requires the appellant to return to Hungary to be tried in relation to an offence of fraud which is further specified below. The appellant was arrested in relation to warrant 1 on 5th October 2021 and subsequently produced at the Westminster Magistrates Court. Warrant 2 was issued by the requiring authorities on 14th October 2021 and certified by the NCA on 10th November 2021. Warrant 2 is a conviction warrant and it relates to a sentence of 4 years 6 months imprisonment which was imposed on 15th October 2018 and finalised on 12th September 2019 in respect of offences which, again, are further specified below.
2. The extradition hearing in respect of both of these warrants occurred before District Judge Turnock (“the District Judge”) on 24th November 2022. The hearing went part-heard and subsequently a judgment was issued by the District Judge ordering the appellant’s extradition on 18th January 2023. Permission to appeal was granted on the papers by Cavanagh J on 29th February 2024. The sole ground upon which the appeal is pursued, notwithstanding other grounds having been raised before the District Judge, is that it would be a disproportionate breach of the appellant’s article 8 rights and those of her family members for her extradition to be ordered. Cavanagh J concluded when granting permission that it was not reasonably arguable that the District Judge was wrong to find that there were no article 8 grounds to refuse extradition on the basis of the evidence which was before her. However, the passage of time following the District Judge’s decision had given rise to further fresh evidence which could not have been put before the District Judge. Cavanagh J, whilst willing to grant permission to appeal, was unwilling to grant leave to adduce this fresh evidence which, he concluded, would have to be addressed as part and parcel of the appeal in accordance with the well-known guidance from the case of *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin). Subsequent to Cavanagh J’s decision on permission the appellant obtained leave for the production of a report from a social worker pursuant to section 7 of the Children Act 1989 and dated 21st June 2024.
3. As set out above warrant 1 is an accusation warrant. The appellant is accused of conspiring to defraud a Slovak company in relation to a contract for the transportation of soya beans. In December 2018 the Slovak company entered into a contract with a Hungarian company for storage of 50 tonnes of soya beans in Hungary and contracts were placed for the transportation of these beans from Slovenia. The person who commissioned this transportation however directed the driver to transport them to two alternative locations in Hungary and they were subsequently sold for around £40,000. The appellant is alleged to have been involved in this criminal enterprise by opening a bank account to receive the proceeds of sale from the stolen beans. She opened a bank account on 4th October 2018 for that purpose and once the sale proceeds had been paid in, she then withdrew £40,000 on 5th and 6th December 2018. Ultimately the soya beans were recovered and returned to the Slovak company.
4. Warrant 2 is a conviction warrant in relation to two offences of supply of drugs for which the appellant was sentenced to 4 years and 6 months imprisonment all of which remains to be served. The nature of the offence was that the appellant, together with

her partner and children, conspired to supply a psychoactive substance for financial gain. The appellant's role was to purchase the psychoactive substance, take orders from customers and measure out doses as well as completing sales. On occasions the appellant supplied individuals with the psychoactive substance for free.

5. At the hearing before the District Judge the appellant gave evidence explaining that she came to the UK in August 2017 but had no right to remain in the UK. She had four children all of whom live in the UK including a son (who has four children of his own); a daughter Gina Veres who at the time of the hearing was 25 years old; a son called Istvan who is 20 years old and who lives with the appellant; and a 13 year old son Tamas, who at the time of the hearing lived with Ms Veres since he did not get on with the appellant's partner. The appellant explained that she suffered from COPD and that she was suffering with incontinence. She explained that Ms Veres was Tamas's legal guardian. At the time of the hearing Ms Veres was undergoing IVF and the appellant stated that once Ms Veres became pregnant, she would hand back Tamas as she would not be able to look after him.
6. So far as Istvan is concerned the appellant explained that he is partially blind in one eye and has distorted vision in the other eye. She explained in her evidence that Istvan was reliant upon her to assist him with everyday activities and care. She explained that she had already served 16 months in prison on remand in relation to the offences for which she was convicted and wanted. She expressed concern as to the impact on herself, but also the welfare of her children, if she were to be extradited.
7. The District Judge had two reports from Dr Diana Birch dated 24th May and 15th July 2022. Dr Birch assessed both Istvan and also the appellant. Dr Birch noted a medical report from the Metropolitan Pedagogical Service in Budapest which had undertaken an assessment of Istvan when he was 16 years old and noted that he was able to move confidently around the building without problems using the functional sight which he had. He was able to move with confidence in familiar settings and see the lines of a zebra crossing and cross a road reliant upon his hearing as well as using a bus on his own. Dr Birch's conclusion in respect of Istvan was that he needed the support of his mother and had become dependent upon her, and this was due to the fact that he had not been actively encouraged to attend services designed to assist young people with visual impairment to lead an independent life. So far as Dr Birch report dealt with the circumstances of the appellant, she noted that she complained of suffering with COPD.
8. The District Judge received evidence from the appellant's partner Zsolt Mate who explained that he had met the appellant when he was working as a prison guard, and she was on remand in prison, and they had started a relationship in February 2016. Mr Mate said he had arrived in the UK with the appellant in August 2017. He said that he did not consider that he would be able to take on the role as carer for the appellant's children for the period that she would spend in custody as he had no legal responsibility for them. He also considered that their relationship would come to an end if the appellant was extradited.
9. The District Judge also heard from Ms Veres who explained that she had come to the UK on 7th September 2020 and lived with her partner and Tamas who had moved in with her because of the uncertainty caused by the extradition proceedings and also because the appellant had no paperwork and was unable to register him either with the

GP or at a school. Ms Veres explained that Tamas was financially supported by the appellant's partner. Ms Veres explained that she was undergoing IVF treatment and that if she were to become pregnant Tamas would be returned to the care of the appellant. She expressed concern for the emotional wellbeing of Tamas and Istvan if the appellant were to be extradited.

10. In reaching her conclusions in relation to article 3 the District Judge made clear at paragraph 39 of her judgment that she was not satisfied that the appellant suffered from COPD or incontinence. Having examined the medical records the District Judge accepted that she had an asthma diagnosis for which she was prescribed medication and that she had also been diagnosed with anxiety and high blood pressure. She was satisfied that these conditions could be properly medicated and treated within the Hungarian prison estate.
11. Moving to other issues more central to this appeal, the District Judge set out the factors in favour and against the grant of extradition in paragraphs 53 and 54 of her judgment in the following terms:

“53. Factors said to be in Favour of Granting Extradition:

(i) There is a strong and continuing important public interest in the UK abiding by its international extradition obligations.

(ii) The offences for which the warrants have been issued are of a serious nature. There is a very lengthy sentence of 4 years 6 months' imprisonment outstanding for the drug offence(s). The fraud offence is a serious offence, which is aggravated by the fact that she has previous convictions for dishonesty in Hungary.

(iii) The Requested Person has no lawful right to remain in the UK.

(iv) The Requested Person is not currently the primary carer for her youngest child (Tamas). Ms Veres is the person who is registered as having parental responsibility for Tamas in the UK and he has been living with her for the past year.

(v) Her disabled son (Istvan) is an adult, who has pre-settled status to remain in the UK and is currently living with the Requested Person and her partner. Notwithstanding his visual impairment, it is the opinion of Dr Birch that his dependency upon the Requested Person is *“to a great extent due to the fact that he has not been actively encouraged to attend services designed to assist young people with visual impairment to lead an independent life.”*

54. Factors said to be in Favour of Refusing Extradition:

(i) The Requested Person claims to have arrived in the UK in August 2017 – although it is noteworthy that this is inconsistent

with the suggestion that she opened a bank account in Hungary in December 2018 for the purpose of committing the fraud offence for which the EAW has been issued. The Requested Person also gave evidence that she returned to Hungary for the purpose of attending the trial in relation to the drug offence(s) for which the AW has been issued, which took place in October 2018. It therefore seems more likely that the Requested Person has only been residing permanently in the UK from the start of 2019.

(i.i) The Requested Person's four children all live in the UK (including her 13 year old son), as does her partner with whom she has been together for five years. Other than the Requested Person, all of her family have pre-settled or settled status to remain in the UK and have no intention of returning to Hungary. They do not think that they will have any contact with the Requested Person (whether in person or by telephone) during her time in prison in Hungary. This could therefore lead to familial separation for a significant period of time.

(i.ii) The Requested Person provides some care to her youngest son, in the form of taking him to/from school. Her partner provides financial support to Ms Veres to support his day to day living. It is possible that Mr Mate would no longer provide this support for Tamas in the event of the Requested Person's extradition, which would cause financial difficulties for Ms Veres. It was also hoped that Tamas would move back in with the Requested Person and her partner in 2023 to enable Ms Veres to start her own family. She has indicated that she would be prepared to let Tamas go into care rather than having to support him alongside her own family if she were to get pregnant.

(i.v) The Requested Person's son, Istvan, has a visual impairment which means that he is highly dependent on the Requested Person for his day-to-day activities. He lives with the Requested Person and her partner. It is possible that Mr Mate would no longer allow Istvan to live with him in the event of the Requested Person's extradition."

12. The District Judge concluded that the appellant was not a fugitive in respect of either of the warrants. She did, however, accept the submission made on behalf of the Judicial Authority that the appellant would have left Hungary knowing that there was an outstanding sentence of imprisonment opposed upon her that she needed to serve, and therefore the life that she has built for herself in the UK was to that extent precarious.
13. The District Judge reached specific findings in respect of the article 8 issues. She specifically dealt with the circumstances of the appellant and her two younger children. In relation to Tamas she noted that the appellant was not the sole or even the primary carer for this young person and she expressed her doubt as to the suggestion

that Mr Mate might withdraw financial support from Tamas were the appellant to be extradited. She specifically rejected the proposition that if the appellant was extradited Tamas might not be able to continue living with Ms Veres. She did not accept the evidence of the appellant and Ms Veres that if Ms Veres became pregnant Tamas would be returned to the care of her mother. This was because Ms Veres had taken responsibility for Tamas on the basis, firstly, that he did not get on with Mr Mate and, secondly, that the appellant did not have any leave to remain in the UK and therefore could not register Tamas with the authorities. The District Judge noted that neither of these two factors had changed and thus there was no evidence to support the suggestion that Tamas would have to return to his mother if Ms Veres became pregnant. Further the District Judge did not accept that it was plausible to suggest that Ms Veres would permit Tamas to go into care or be returned to Hungary if she became pregnant and the appellant was extradited. In paragraph 65 of her judgment the District Judge noted that she was “absolutely certain that she [Ms Veres] would do what she could to ensure that he [Tamas] was well looked after”. The District Judge was unwilling to accept that Ms Veres would abandon her brother were she to have a baby of her own. Finally, the District Judge noted that the appellant had no leave to remain in the UK and was therefore living in the UK illegally with the risk of being removed at any time under the Immigration Rules. Thus, Ms Veres’ decision to look after Tamas was in many ways separate from the question of extradition.

14. Turning to the interests of Istvan, the District Judge noted the assessment set out above undertaken by the Hungarian authorities when he was a younger person. She also noted the assessment set out above reached by Dr Birch. The District Judge concluded that the medical evidence available demonstrated that Istvan was capable of living independently provided he had access to appropriate medical care and support. Istvan was not in need of a full-time carer, and it was not credible to suggest that Mr Mate would evict Istvan from the family home in the event of the appellant being extradited. The District Judge noted that even were she wrong about that Istvan had two other siblings in the UK who could provide him with assistance, and housing support could be provided to him by the UK authorities. Thus, her overall conclusion was that the appellant’s evidence in relation to Istvan was exaggerated and the impact on Istvan of her being extradited would not be as severe as had been suggested.
15. In relation to the appellant herself, as set out above, the District Judge was satisfied that the appellant’s account of her own physical health problems was exaggerated, and the District Judge was satisfied that in so far as necessary the appellant would have access to adequate medical care and treatment.
16. The District Judge set out her overall summary of the article 8 findings in paragraphs 74 and 75 of her judgment in the following terms:

“74. Dealing then firstly with the Article 8 balancing exercise in respect of the EAW, the Requested Person’s extradition is sought for the purpose of her prosecution for a relatively serious offence for which she would likely receive a sentence of imprisonment in Hungary in the event of her conviction. She is not a fugitive in relation to this matter and the offending is said to have taken place four years ago. She does have family in the UK (all of whom have leave to remain) and extradition would result in her separation from those family members

whilst she was awaiting her trial. Unfortunately, no evidence was adduced to demonstrate whether or not it is likely that the Requested Person would be permitted to return to the UK at the conclusion of these proceedings, but I consider this to be a likely outcome in light of the family which she has here – although I recognise this is not certain. And moreover, her life in the UK has been on unsteady foundations for a number of years in light of her unlawful immigration status. For the reasons set out above, I am also not particularly persuaded that the impact of her extradition on either herself, Tamas or Istvan, would be particularly severe. But I do recognise that the arguments in relation to Article 8 in respect of the EAW are finely balanced. Nevertheless, I am of the view that the balance falls in favour of ordering extradition in her case. I do not therefore accept that it would be a disproportionate interference with the Article 8 rights of the Requested Person or any of her family member to order her extradition in respect of the EAW.

75. Dealing secondly with the Article 8 balancing exercise in respect of the AW. In addition to the arguments set out in the paragraph above, the argument in favour of ordering extradition in respect of the AW are much stronger. Not only is the offending much more serious, but there is a very lengthy sentence of imprisonment outstanding and the Requested Person came (or came back) to the UK in full knowledge that this sentence of imprisonment had been imposed upon her. I am further satisfied that the reason she has not regularised her immigration status in the UK was because she was seeking to avoid serving the sentence of imprisonment to which the AW relates, a factor that further strengthens the public interest which applies in ordering extradition in this case. I do not therefore accept that it would be a disproportionate interference with the Article 8 rights of the Requested Person or any of her family members to order her extradition in respect of the AW.”

17. In the light of the District Judge’s conclusions she ordered the extradition of the appellant to Hungary.
18. Subsequent to the hearing before the District Judge the appellant relies upon a number of changes in the circumstances of the case as founding the conclusion that, in the light of the fresh evidence, the District Judge ought to have concluded that it was a disproportionate breach of article 8 for her extradition to be ordered, and therefore this fresh evidence should be admitted and her appeal allowed. That fresh evidence is, firstly, comprised within an addendum proof of evidence provided by the appellant. In that addendum proof of evidence she explains that Mr Mate has left her and that she is now the sole carer for Tamas and Istvan. Furthermore she explains that Istvan had a girlfriend and that he and his girlfriend had a daughter Jazmin who was born on 4th January 2023 shortly after the hearing before the District Judge concluded. Istvan’s girlfriend has broken up with him and abandoned him and their daughter. As a consequence of this, and also as a result of Istvan’s difficulties with his vision, the

appellant is providing primary care for her granddaughter. Ms Veres has become pregnant and as a result has required Tamas to leave her home and live with the appellant who now provides care and support for Tamas. Finally, the addendum proof of evidence deals with the appellant's health and in particular investigations which are being undertaken in respect of concerns that she may have developed cancer. In addition to her COPD the appellant explains that she has also been in receipt of treatment for severe migraines.

19. The report under section 7 of the Children Act 1989 has been prepared by a Senior Practitioner social worker, Mr Robert Whitmore, who is employed by Staffordshire County Council. Within the report Mr Whitmore explains that Jazmin's primary carer is the appellant who supports her in all aspects of daily living. Mr Whitmore notes the close bond that she has with her grandmother as well as with her father Istvan and uncle Tamas. Mr Whitmore describes that Jazmin is being well cared for and thriving and has been observed by her health visitor as developing appropriately with positive attachments to her family members, in home conditions that are clean, tidy and well maintained.
20. Within the analysis in the section 7 report Mr Whitmore explains that if the appellant were extradited to Hungary there would be significant consequences for Jazmin, as she would lose her primary carer and the person with whom she is closest, causing a very detrimental emotional impact on her wellbeing. He further observes there would be significant consequences to Tamas if his mother was extradited because, again, this would have a very detrimental emotional impact upon his wellbeing. Mr Whitmore notes that both Jazmin and Tamas would require Children's Social Care involvement in respect of the care and support that would be required by them if the appellant were extradited on the basis that Istvan would be unable to care for Jazmin on his own as a result of his visual impairment. In particular, in the light of his findings, based upon multiple visits to the family home and the contribution of other professionals such as the health visitor and the safeguarding lead at Tamas school, Mr Whitmore concludes that he does not feel that it is in the best interests of either child for the appellant to be extradited "as this would destabilise the family unit, Tamas education, and cause both children a significant degree of emotional harm".
21. Mr Whitmore's overall conclusions are set out in the following terms:

"There is a request by the Hungarian Judicial Authorities for Ms Baracz to be extradited back to Hungary to complete a custodial sentence for an alleged offence that Ms Baracz has shared she was imprisoned for in August 2014. There are a number of factors as to why extraditing her to Hungary would not be an option the Local Authorities would endorse. The main reason for this is that it would cause both Jazmin and Tamas significant emotional harm. At present there are no safeguarding concerns regarding Jazmin and Tamas. Ms Baracz is Jazmin's primary carer because her father Istvan is registered blind and is unable to care for her on his own. Ms Baracz provides 90% of the care afforded to Jazmin on a daily basis. She also has an incredibly close bond with her. There are no concerns about Jazmin's health and wellbeing, nor her development. Were Ms Baracz to be extradited Jazmin's

quality of care would deteriorate and whilst she would still have the stability of love from Tamas and Istvan, stability of care would deteriorate. Jazmin would also experience a significant loss emotionally given the bond she has with Ms Baracz and that given her biological mother has no contact with her, the loss of another maternal figure in Ms Baracz would be devastating for Jazmin.

Tamas has spoken at length about the worry and concern he has for his mother being extradited. He firmly believes he would not see her again due to her health issues and her serving a prison sentence. Tamas has a very close bond with his mother and there are no concerns in respect of the care he is afforded or around his wellbeing. He has a good education and is doing well. Tamas has shared that he doesn't want to lose his mother and that this would have a huge impact on him if she was extradited. The impact on his emotional wellbeing would be significant.

Ms Baracz health is not good and she has a number of issues which are ongoing. She is being tested for throat cancer, diabetes and has COPD. Her testing and medical treatments are ongoing and it is important that she is able to access this as she is hugely important to her family.

For these reasons the Local Authority conclude that there are multiple reasons on welfare ground as to why Ms Baracz should not be extradited to Hungary.”

22. On behalf of the appellant Mr Hepburne Scott accepted that, in accordance with the view expressed by Cavanagh J, he was unable to pursue any complaint in relation to the conclusions which had been reached by the District Judge on the basis of the evidence which was before her. The essence of Mr Hepburne Scott's submission is that the new material, and in particular the section 7 report, was compelling and decisive in respect of the article 8 issues in the case. This report was thorough and had been compiled following numerous visits to the family by the author along with consultation with other professionals amply qualified to comment about the impact on Jazmin and Tamas if extradition were to be ordered. Mr Hepburne Scott submitted that the conclusions in the section 7 report were stark and evidenced that the consequences of extradition on the welfare and emotional wellbeing of the appellant's children, as well as the appellant, would be exceptionally severe. The report explains that the appellant is Jazmin's primary carer and that she has a strong relationship with the appellant. Furthermore the report reinforces that Tamas is dependent upon the appellant for his basic care needs to be met. Were the appellant to be extradited the report reinforces the appellant's submission that there would be no one with parental responsibility to care for Tamas and, as set out above, there would be significant detrimental effect on the appellant's children.
23. In response to these submissions Ms Beatty contends that none of the fresh evidence makes a difference to the proper determination of the outcome of this appeal and therefore none of it is admissible. So far as Tamas is concerned Ms Beatty submits

that the District Judge dealt comprehensively with the care arrangements for him and found in paragraph 65 of the judgment that his sister would look after him in the event if the appellant was extradited. This possibility is not explored at all in the section 7 report, and there is therefore no evidence either in that report or from the appellant's daughter Mr Veres to gainsay the conclusions reached by the District Judge in paragraph 65 of her judgment. Furthermore, Ms Beatty submits that if it were the case that Tamas's sister were prepared to allow him to be put in care it would be expected that that would have been evidenced in the new material before the court.

24. So far as Jazmin is concerned Ms Beatty accepts that the District Judge was unaware of the existence of Jazmin and therefore unable to take her interests into account. However, Ms Beatty submits that while the section 7 report stated that Istvan would be unable to care for Jazmin, the District Judge concluded at paragraphs 70 to 71 of her judgment concluded that the medical evidence showed that Istvan could care for himself with support from the health care system and that the evidence in relation to his capabilities were exaggerated. Moreover, Ms Beatty submitted that the author of the section 7 report had not investigated the extent of Istvan's disability, and it can be safely concluded that the District Judge would not have accepted that he could not care for Jazmin with the support of the local authority and appropriate help. The report also did not deal in terms with what the solution might be if the care provided by the appellant was removed, apart from the suggestion in section 12 of that report that a "child in need" plan would have to be prepared. Ms Beatty submitted that there was a wider family structure in place in the UK which would enable the mitigation of the impact upon Jazmin as a result of the removal of the appellant's care. Finally Ms Beatty submitted that there were weighty factors in support of extradition which have been fully specified in the District Judge's decision.
25. As is clear from the submissions which have been recorded above the starting point in this appeal is the decision of the District Judge which, it is necessary to point out, was in my judgment careful, thorough and clear. For the reasons which have been given, and which are reflected in the decision of Cavanagh J on permission to appeal, there can be no sensible argument but that the decision which the District Judge reached on the evidence which was before her was appropriate and sound. The issues in the appeal revolve around the evidence as to the changes in circumstance which have emerged since the hearing before the District Judge occurred.
26. The appropriate approach on appeal is set out in section 27 of the Extradition Act 2003. Under section 27(4) it is possible to allow an appeal where three conditions are satisfied. The first condition is that an issue is raised in the appeal which was not raised at the extradition hearing, or is based on evidence that was not available at the extradition hearing; the second condition is that the issue or evidence would have resulted in the District Judge deciding a question before the court differently; the third and final condition is that had the judge decided the question differently the judge would have been required the order the person's discharge. These conditions are reflected in the leading case of *Fenyvesi* at paragraph 32. Essentially an appellant needs to establish that the evidence was not available, or could not have reasonably been obtained, at the time the extradition hearing took place, and is decisive.
27. There can be no dispute that the fresh evidence pertaining to the appellant's granddaughter was not available and could not have been obtained at the time of the extradition hearing. So far as Tamas is concerned there is fresh evidence in relation to

his circumstances, namely that he is no longer living with his sister but is now living with the appellant and his older brother Istvan. I have set out above a full account of the new material which is before the court in this appeal. The key issue is, therefore, whether this new evidence is decisive.

28. The approach to be taken to article 8 in the context of extradition is to be derived from the case of *Norris v Government of the United States of America* (2) [2010] UKSC9; [2010] 2 AC 487. The effect of this decision was distilled in paragraph 8 of Lady Hale’s judgment in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25 in the following terms:

“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.”

29. As the case of *HH* emphasises, in a case in which the rights of a child are involved the best interests of that child must be a primary consideration for the court. Pursuant to the case of *Polish Judicial Authorities v Celinski & others* [2015] EWHC 1274 the

appropriate approach in considering article 8 issues is, as the District Judge did in the present case, to set out a balance sheet of the factors in favour and opposed to extradition so that a balance can be explicitly struck.

30. I have reviewed the balance sheet which was set out by the District Judge in paragraphs 53 and 54 of her judgment. There remain factors in favour of granting extradition in the form of: firstly, the strong continuing importance of the UK abiding by international extradition obligations; secondly, the seriousness of the offences for which the appellant is wanted (including in particular the length sentence of 4 years 6 months imprisonment for the drugs offences); and, thirdly, the fact that the appellant has no lawful right to remain in the UK. The District Judge noted that it was in favour of the grant of extradition that the appellant was not at that time the primary carer for Tamas and Ms Veres was registered as having parental responsibility for him and he had been living with her. This is an issue in relation to which matters have moved on. Finally, the District Judge noted that in favour of granting extradition it was to be noted that Istvan was an adult with pre-settled status in the UK whose dependency upon the appellant was according to Dr Birch largely due to the fact that he had not been encouraged to attend services designed to assist him as a person with visual impairment to lead an independent life.
31. The factors the District Judge noted as being in favour of refusing extradition were, firstly, the likelihood of the evidence the appellant had been residing permanently in the UK since the start of 2019 and, secondly, that all of her children live in the UK and that apart from the appellant they all have pre-settled status. The third point noted by the District Judge was the care which the appellant provided to Tamas at that time by taking him to and from school. The final point was the extent to which Istvan was dependent upon the appellant for support with his day-to-day activities.
32. As set out above the District Judge formed specific factual conclusions in relation to the issues which she had identified as part of the overall balance. However, for the purposes of this appeal in my view it is necessary to start with the article 8 issues associated with Jazmin and Tamas and the fresh evidence relating to them, not least because their best interests as children are of primary importance in making the article 8 assessment. So far as Jazmin is concerned it is clear that, firstly, the primary carer for her at present is the appellant who, based upon the independent evidence of the section 7 report, provides Jazmin with care and support from day to day. There is no doubt that the removal of the appellant from Jazmin's life as a consequence of her being extradited would have a very significant impact upon her emotionally. There is no doubt that this is a factor to which significant weight must be attached in the striking of the overall balance. That said, the appellant is not Jazmin's parent and Jazmin would still remain with her father, and in that sense, have direct parental support. It is clear from the section 7 report that Jazmin's father Istvan provides her with emotional support in the family home. The section 7 report engages to some extent upon the needs for Jazmin were the appellant to be extradited. Mr Whitmore notes that Istvan would not be able to care for Jazmin himself alone and there would be a need to identify other sources of support for him to care for Jazmin if the appellant were to be extradited. Mr Whitmore mentions the input of Children's Social Care in examining what care and support would be required which would presumably be through Jazmin and Istvan's wider extended family within the UK, or other sources to be drawn upon by Children's Social Care. Whilst the respondent's point in relation

to Istvan's need for personal care being overstated in the view of the District Judge are noted, these points do not overcome the unknown nature of the care and support which would be necessary to put in place alongside Jazmin's father in order to enable her wellbeing to be secured. This is a further factor to which weight has to be attached in the balance under article 8.

33. In relation to Tamas the principle change since the District Judge's conclusions is that Tamas is now living with the appellant and Istvan as a family unit. He is no longer being cared for by his sister as his primary carer. That said, it does not appear from the fresh evidence that the points made by the District Judge as to Ms Veres providing the necessary wherewithal for Tamas to be registered with the authorities, on the basis that the appellant has no status in the UK, has changed. In my view there is substance in the points made by the respondent that the conclusions reached by the District Judge in paragraph 65 of her judgment have not in effect been gainsaid by the fresh evidence. These conclusions were that Ms Veres would provide her brother with help and support, including accommodation, if necessary, if the appellant were to be extradited. The suggestion that she would abandon her brother was specifically rejected. There is no evidence to suggest that Tamas's care would not be supported as it had been previously, if the appellant were to be extradited. That said, it is of course necessary to take into account that as noted in the section 7 report the extradition of the appellant would have a significant impact on Tamas's emotional wellbeing. It is clear from that report, as indeed it was clear to the District Judge, that Tamas has a close emotional bond with the appellant which would be ruptured by extradition for the period that the appellant had to return to serve her sentence and engage with the criminal proceedings in respect of the fraud allegation.
34. Whilst the District Judge dealt with the article 8 balance in respect of each of the warrants separately, in my view it is appropriate to examine the article 8 balance in the context of the extradition proceedings as a whole, taking account of the substance of both of the warrants alongside all of the other factors which need to be brought into account before a conclusion can be reached in relation to the article 8 arguments. In my view it is clear that the fresh evidence adds significantly to the weight to be attached to the interests of the children who would be affected by the appellant's extradition. One of those children, Jazmin, was not known about at the time when the District Judge reached her conclusions. I have set out above the reasons why significant weight should be attached to her interests in striking the article 8 balance. So far as Tamas is concerned there is now a greater detail comprised in the section 7 report pertaining to the value which he places upon his relationship with his mother which provides some additional weight to the consideration of his interests in striking the article 8 balance. So far as Istvan is concerned in my view little has changed by way of the fresh evidence which has been adduced. It follows that as a consequence of this new material there is greater weight to be attached to the appellant's family life and the interests of the members of her family and in particular the child members of her family who would be affected by her removal.
35. On the other side of the balance there are factors associated with the public interest to which considerable weight must be attached. Whilst the fraud offence is properly described as being serious, of particular moment in my judgement is the very lengthy sentence which the appellant still has to serve in full, namely 4 years 6 months imprisonment. The length of the sentence reflects the seriousness of the offending for

which this sentence was imposed. Furthermore, as the District Judge noted the appellant has no lawful right to remain in the UK and her presence here is therefore to that extent precarious. Having considered carefully both the weight to be attached to the factors in favour of the grant of extradition, and also the enhanced weight to be afforded to those factors in favour of refusing extradition which I have set out above, I remain of the view that overall, and taking both warrants together, I am not satisfied that on the basis of the fresh evidence it would be disproportionate for the appellant to be extradited in terms of the impact on the article 8 rights which are engaged and at stake in this case. The weight to be attached to the public interest in respect of a person wanted for such a significant period of imprisonment is very considerable and in my judgment it is not appropriate to conclude that the fresh material provided since the District Judge's decision gives rise to a decisive difference in the way in which the balance should be struck in this case. Having, therefore, reassessed the balanced in the light of the material before this appeal I have concluded that the test set out in section 27(4) of the 2003 Act has not been passed and therefore the fresh evidence should not be admitted, and the appeal must be dismissed.