



Neutral Citation Number: [2024] EWHC 2790 (Admin)

Case No: AC-2022-LON-002756

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/11/2024

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

Mr ZOLTAN VERES

Applicant

- and -

PECS REGIONAL COURT HUNGARY

Respondent

Mr Matei Clej (instructed by Taylor Rose Solicitors) for the Applicant
Ms Amanda Bostock (instructed by Crown Prosecution Service Extradition Unit) for the
Respondent

Hearing date: 16th October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 4 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Collins Rice:

Introduction

1. Mr Veres appeals, with the permission of the Court, a judicial decision to order his extradition to Hungary to serve a prison sentence passed on him there. He wishes to rely on evidence of developments postdating that decision.

Background

(a) The decision under appeal

2. Mr Veres' extradition was sought under three conviction warrants issued by the Hungarian judicial authority. He is wanted to serve a total of 3 years and 5 months' imprisonment outstanding from a total sentence of 4 years.
 - i) The first warrant was issued on 25th March 2020 and certified by the National Crime Agency (NCA) on 28th January 2021. It relates to a conviction for possession with intent to supply class B drugs, by street dealing, as part of a criminal organisation involving his father and two others. A sentence of two years and six months' imprisonment was imposed, of which 1 year and 11 months remains to be served.
 - ii) The second warrant was issued on 26th March 2021 and certified by the NCA on 23rd March 2022. It relates to a conviction for attempted domestic burglary of an acquaintance. A sentence of six months' imprisonment was imposed, of which 5 months and 26 days remain to be served.
 - iii) The third warrant was issued on 11th January 2022 and certified by the NCA on 11th February 2022. It relates to a conviction for domestic burglary of an acquaintance involving theft of his cash box. A sentence of one year's imprisonment was imposed, all of which remains to be served.
3. Extradition was ordered by District Judge Clarke, after a hearing on 21st July 2022. Her reasons are set out in a written judgment dated 30th September 2022. Mr Veres had resisted extradition on the single ground of disproportionate impact on his rights and those of his family, protected by Article 8 ECHR, to private and family life.
4. He had relied at the extradition hearing on a report dated 29th April 2022 prepared by Dr Diana Birch, a paediatrician with a special interest in adolescence and child protection. Dr Birch is medical director of Youth Support, a charity specialising in the assessment and care of single mothers, families, young people and children. She had been asked to prepare a report on Mr Veres' eldest son A '*with respect to his medical needs and the relationship between him and his family members and support network*' and did so following an assessment session with the family conducted remotely. Dr Birch also gave oral evidence at the extradition hearing.

5. Dr Birch's report set out that A was the eldest of the four children of the family, being a little over 9 years old at the time. Mr Veres had married in Hungary and the family had been in the UK for some three years. A had a younger brother aged 6, and two younger sisters aged 3, and 8 months, respectively. A had been born very prematurely and had been left with severe visual impairment as a result.
6. Dr Birch explained that her report had been prepared on the basis that A's mother had given an account of A having witnessed Mr Veres' arrest at the family home on 20th October 2021. (This related to the first warrant. Mr Veres had been released on bail the following day. Mr Veres was arrested on the third warrant on 24th February 2022 and again released on bail the following day.) The mother reported A as having been traumatised by that event, and as experiencing emotional and psychological problems associated with fear of his father's extradition; the mother reported concern that the impact on A of extradition would be particularly severe.
7. Dr Birch reported A as being '*fluent and sociable*' – articulate, intelligent and having made lots of friends at school. But she was told that since Mr Veres' arrest A had been a different child – hyperactive, anxious and aggressive. He had not had any formal testing, but the mother said their GP had referred him to a neurologist. A was said to be very close to his father, and Mr Veres had been helping him settle back down at school, but he remained aggressive at home. The mother wondered whether A had ADHD; Dr Birch thought not, but thought he looked withdrawn and depressed at the assessment. His mother agreed he was depressed and reported him as saying he wanted to harm or kill himself, which Dr Birch considered '*very extreme for a child of his age*'. The mother reported that they had no family support in the UK, and, becoming tearful, said they did not know how they would cope.
8. Dr Birch noted that A had said spontaneously at the outset that he did not want his father to go away, and would miss him. It was Dr Birch's conclusion that A had been traumatised by witnessing his father's arrest and was '*suffering from childhood PTSD with depressive features*'. His long-term psychological development was likely to be severely impaired by extradition, and his mother and siblings would be emotionally affected in a way which would also impact on him. She recommended every effort be made to keep Mr Veres in the UK.
9. It was put to Dr Birch in cross-examination that there was no supporting medical evidence, or evidence from A's school, supporting her conclusions, and that she had taken insufficient account of the motivations of the parents in deploying family issues to resist extradition, and of the suggestibility or family loyalty of A. Assessing Dr Birch's evidence overall, the District Judge said this:

Regarding Dr Birch I accept her evidence. It is disappointing that she didn't deal with the issue of malingering in her report and it is right to say that the information that she has about [A]'s behaviour comes not from independent sources but from the [Requested Person] and his wife who clearly have a motive to exaggerate the position. However, Dr Birch withstood robust cross examination and explained that in her professional opinion there was no coaching which had taken place and is satisfied that her findings are correct.

10. The District Judge addressed herself to the relevant legal authorities and undertook the balancing exercise directed by *Celinski v Poland* [2015] EWHC 1274 (*Admin*) to consider whether the family's Art.8 rights would be disproportionately impacted by Mr Veres' extradition.
11. In favour of extradition, she noted the powerful public interest in returning convicted persons to serve their sentences in accordance with the UK's mutual treaty obligations. That public interest was enhanced in the present case because she had found Mr Veres to be a fugitive from justice; she rejected his evidence on this point as being '*simply beyond belief*'. His offending had been '*serious and unpleasant*' – organised drug dealing and offences of dishonesty involving breach of friendship and trust. A substantial sentence had been passed of which a significant period remained outstanding. There had been little delay properly attributable to the requesting authorities.
12. On the other side of the balance, she noted the family's settled life in their three years in the UK and that Mr Veres had not offended further. His wife was financially dependent on him and relied on him emotionally. She accepted Dr Birch's evidence and that the biggest impact in the case would be upon A.
13. In reaching her conclusion that extradition would *not* be disproportionate overall, the District Judge noted that Mr Veres' wife had access to benefit payments and that three of the children were by then of school age, and rejected her evidence that she had no family support network, concluding that '*clearly there are family members here who will be in a position to assist her*'. The District Judge accepted that A would be impacted. But she concluded that that impact would not be such as to be capable of tipping the balance against extradition.

(b) *Subsequent litigation history*

14. Mr Veres applied for permission to appeal on 6th October 2022, on the ground that the District Judge had reached the wrong decision on the Art.8 balance; because, among other things, her conclusion was irreconcilable with her acceptance of Dr Birch's evidence. He also indicated that he intended in due course to seek to adduce further evidence to show the mental health of Mr Veres' wife and children had deteriorated since the extradition hearing, and that these factors would now be decisive in bringing the balance down against extradition. He then applied formally for permission to adduce a further witness statement from himself, and for the extension of his representation order for an update report from Dr Birch.
15. All of these applications were considered on the papers by Jay J. By order of 24th February 2023, he admitted Mr Veres' witness statement, but refused the application for an addendum report and refused permission to appeal. His reasons were these:

I am not satisfied that it is right for there to be a further opportunity to adduce expert evidence in this case. It is now said that the psychological health of the younger child is deteriorating. In my view, an insufficiently reliable evidential basis has been advanced for this late application.

This was undoubtedly a difficult case owing to the particular circumstances of the Appellant's son born at 26 weeks' gestation and left with obvious disabilities. However, the DJ did in my opinion fairly summarise the evidence of Dr Birch and make it clear that this evidence was accepted. I am not satisfied that it is arguable that the DJ's conduct of the Art.8 balance was wrong in the *Celinski* sense.

16. Mr Veres successfully renewed his application for permission at appeal to an oral hearing before Morris J on 18th May 2023. By order of 14th August 2023, Morris J also extended his representation order to permit the preparation of an addendum report by Dr Birch, noting that it would be necessary in due course for Mr Veres to satisfy the appeal court that the new report should be admitted having regard to sections 27(4) and 29(4) of the Extradition Act and the judgment in *Szombathely City Court (Hungary) v Fenyvesi [2009] EWHC 231 (Admin)*.
17. Dr Birch's addendum report, dated 16th September 2023, followed a second remote assessment with the family on 11th September, some 18 months after the first assessment. She had been asked to make a further assessment of A and his siblings on the basis that they had been experiencing emotional and psychological problems as a result of worry over the possibility of their father being extradited.
18. Picking up on the reservations expressed by the District Judge in her judgment, Dr Birch's update report stated that '*it was absolutely clear to me that [the children] were expressing their own feelings and that those feelings were genuine and there was no question of malingering or making things up*'.
19. She noted that A was under continuing medical care in relation to his vision. Mr Veres reported concerns with A having headaches, sometimes associated with vomiting, including at school. But he was said to have had a normal MRI scan. Sleep disturbance was reported in relation to both boys, said to arise out of high levels of attachment to, and anxiety about, their father. It was now said that both A and A's brother were expressing anger or aggression, and suicidal ideation. Mr Veres said he had boarded up the younger boy's bedroom window to prevent him throwing himself through it. Their 5-year-old sister was reported as exhibiting symptoms of fatigue, clinginess and general malaise.
20. Dr Birch's conclusions were: to reconfirm her diagnosis of A as suffering from PTSD with depressive features, being sometimes withdrawn and sometimes agitated, with poor sleep and nightmares; and to diagnose his brother as having developed a depressive disorder with suicidal ideation, being angry, obsessed with his father and in a state of constant anxiety and hypervigilance, and as showing signs of childhood PTSD. She considered both children to have '*deteriorated significantly in terms of their emotional and mental health*' in the previous 18 months and that it was '*vitaly important*' that it be quickly resolved that their father would not be extradited.
21. The appeal was listed for hearing on 16th October 2024. Mr Veres applied on 12th September 2024 for a further extension of his representation order to obtain a second update report from Dr Birch. That was granted administratively on 16th September 2024.

22. Dr Birch's second addendum report, dated 5th October 2024, followed a third remote assessment with the family on 4th October, a little over a year since her second assessment. It was commissioned on the basis she had been informed '*there are now increasing problems in the boys' emotional health, their school attendance, dietary issues and not eating if father is not present. The family as a whole has experienced more stress and emotional/psychological issues and there has been concern regarding the mother's mental health and self-harming / suicidal ideation. I have been asked to make a second further assessment of [A] and his siblings who have been experiencing emotional and psychological problems as a result of the worry over the possibility of their father being extradited to Hungary*'.
23. The report deals first with A's brother. He was said to be happy at school, and doing well with lots of friends. He said he liked school and was happy there, and did not worry too much about his father while he was there. But his parents reported him as being so distressed at the start of the new school year that in the first weeks he had persistently refused to attend and the school had issued a warning about his attendance. Mr Veres reported that the boy had locked himself in the bathroom saying that he was going to kill himself and wanted to die, and had had to be rescued via a window. It was said he may have been picking up suicidal messages possibly from his mother. Eating, sleeping and anger issues were reported.
24. The report documents that A was doing well academically at school, but continuing to have headaches and was awaiting the results of a CT scan. Sleeping problems were reported, and both boys were said to insist on sleeping with their father.
25. The elder daughter's emotional stress, fatigue and clinginess were described, and the younger was said to be '*upset by all the emotions around and clung to her father also*'.
26. Dr Birch reported '*a big deterioration in the mother who presented as clinically depressed. She also had suicidal ideation and said she often felt like she wanted to end it all. She reported having been discovered by Mr Veres as she tried to cut her wrists. Dr Birch considered the mother needed help urgently to assist with her depression and prevent her committing suicide. "In consideration of the family as a whole, I am very concerned with respect to the mother's mental health. She has deteriorated significantly over the past year and is showing overt signs of clinical depression and suicidal ideation which should be taken very seriously."* Dr Birch's opinion was also that over the two and a half years that she had seen the children, they had deteriorated significantly in terms of their emotional and mental health. She concluded that '*during this time I have seen the gradual serious breakdown of what had been a closely knit family who it would be no exaggeration to say are falling apart*'.

The present appeal

27. Mr Veres pursues a single ground of appeal: that his extradition would, in all the circumstances, be inconsistent with the rights, protected by Art.8 ECHR, of himself, his wife and his children to private and family life.

28. He applies for permission to rely on the two addendum reports of Dr Birch postdating the extradition hearing. He also applies for permission to rely on a further witness statement of his own (his seventh in these proceedings) dated 15th October 2024 – ten days later than Dr Birch’s report, and the day before the appeal hearing. This gives, in four paragraphs, a short, but dramatic, account of precipitous decline in his wife’s mental condition, such that it was now ‘*in ruins*’. It states that her suicidal tendencies had become so great that he will have no choice but to ask for a medical referral to a psychiatric hospital for her, and for her to be ‘*sectioned due to her mental health*’. She was not able to look after the children any more and he feared their lives would be ruined and they would end up in an institution.
29. Mr Veres also made an oral application, through Counsel, to adjourn the disposal of this appeal for the purposes of obtaining a social services report on the care situation the family would be likely to face in the event of his extradition.

Legal framework

30. The relevant legal framework is well established and uncontroversial. A judge at first instance approaching a question of Art.8 incompatibility in an extradition case must proceed by identifying relevant factors in favour of extradition, and relevant factors against, and then performing an evaluative overall balancing exercise to reach a proportionality assessment (*Celinski*).
31. On an appeal against an Art.8 compatibility determination, the starting point is that the single question for the appellate court is whether or not the District Judge made the wrong decision (*Celinski* [24]). The Supreme Court put it this way in *Re B [2013] UKSC 33*:

An appellate judge may conclude that the trial judge’s conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupported. The appeal must be dismissed if the appellate judge’s view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).

32. The *Fenyvesi* test (set out at [32] of the Divisional Court’s judgment) for the admission of fresh evidence into an extradition appeal is in two parts. First, admissibility is restricted to evidence which either did not exist at the time of the extradition hearing or was not at the disposal of the party wishing to adduce it and which they could not with reasonable diligence have obtained. And second, the court must be satisfied that if the evidence had been adduced, the result would have been different and resulted in the appellant’s discharge. It is described as a ‘strict test’, consonant with the parliamentary intention underlying the 2003 Extradition Act, that

extradition cases should be dealt with speedily and not generally held up by attempts to introduce equivocal subsequent evidence.

Consideration

33. There are in effect two stages to be gone through on this appeal. First, I am asked to consider whether the District Judge's decision was 'wrong' on the materials before her, in the sense that she reached a decision which was defective in law, unsupported by the facts, inadequately reasoned, or otherwise one which it was not properly open to her to have taken. If it was, then the appeal is allowed on that basis alone. If it was not, then I am asked to apply the *Fenyvesi* test to the subsequent evidence, to see if it should be admitted into a refreshed *Celinski* balancing exercise so that it could properly lead to a different outcome and, if so, to allow the appeal on that basis.
- (a) *The District Judge's decision*
34. I can deal with the first stage relatively briefly. I am unpersuaded that the District Judge's decision should be set aside as having been 'wrong' on its own terms.
35. There were considerable and weighty factors properly on the side of the balance in favour of extradition. The District Judge was undoubtedly entitled to give substantial weight to the public interest in returning Mr Veres to Hungary to serve his sentence, in furtherance of the UK's mutual treaty obligations. She was entitled to add Mr Veres' fugitivity as a heavy factor on that side of the balance; and her finding of fugitivity is not challenged on this appeal. Although Mr Veres does challenge the District Judge's handling of the issues of delay and gravity of offending, I cannot find material fault with it. She was entitled to regard Mr Veres' involvement in organised drug dealing as seriously socially harmful, and his burglary and attempted burglary as offending of dishonesty aggravated by the manipulation of trust. A substantial sentence had been passed and most of it remained to be served. Nor was there, on the chronology, strong evidence of material or culpable delay by the authorities.
36. On the other side of the balance, the District Judge accepted that the family had put down roots in the UK over three years, but she was entitled to give that limited weight on its own since it had been founded on fugitivity. She took into account Mr Veres' clean record in the UK. She considered all the evidence she had been given about the impact of extradition on his wife, and accepted she would suffer emotional and other hardship. But the District Judge noted that Mr Veres' wife had access to social security benefits, and to a network of extended family support in the UK. In doing so, she explained the basis on which she had rejected the assertions to the contrary that she had heard, and these were undoubtedly findings she was entitled to make on the evidence.
37. The District Judge also considered fully such evidence as she had about the impact on the children – and in particular of course the evidence of Dr Birch, with its specific focus on A. She accepted that evidence, including that A would be significantly impacted.

38. I do not agree that accepting Dr Birch's evidence must have resulted in a decision in Mr Veres' favour. That is not how the *Celinski* balancing exercise works. The District Judge, having accepted the evidence, then had to *weigh* it. She clearly gave weight to what Dr Birch had said, although registering at the same time that it was unsupported by independent evidence from A's school or GP, that it was heavily reliant on the information provided by his parents, both of whom the District Judge had had cause to find not wholly credible witnesses (Mr Veres particularly so), and that it did not address squarely the issue of whether the children's own conduct at the assessment might have been influenced by their parents, who were present throughout and who had a powerful motive to do so. But by accepting and giving such weight as she plainly did to Dr Birch's evidence, the District Judge was not bound to find either that the matters contained in Dr Birch's report were *determinative* of the outcome, or that the *overall* balance of competing factors came down in favour of discharging Mr Veres.
39. Dr Birch's original report was specifically focused on A. It contained a diagnosis of childhood PTSD based on the trauma reported by his parents of his having seen his father arrested six months previously, the disorder in question having 'depressive features'. An assessment of the gravity of this disorder and its manageability or otherwise does not come across clearly from the report. The prognosis that A's 'long term psychological development is likely to be severely impaired if his father is removed from the UK' is not particularised or further explained. This was in all the circumstances a report to which varying degrees of weight could entirely properly have been given, consistently with its having been 'accepted', and it was a matter for the District Judge to evaluate that weight within the context of the balancing exercise as a whole.
40. It cannot, in all of these circumstances, be said that it was not properly open to the District Judge to reach the conclusions she did about the Art.8 challenge, on the materials before her, and for the reasons she gave.

(b) *The subsequent evidence*

41. I turn therefore to the matter of the later evidence. The parties agreed before me that the principal issue on this appeal is what I should make of Dr Birch's addendum reports. But I start with the application to admit Mr Veres' recent witness statement, and the question of whether this is evidence which could and should change the balance of proportionality in his favour.
42. Mr Clej, Counsel for Mr Veres, put it to me that in the light of this evidence I should now effectively regard this case as being a 'sole carer' situation: Mr Veres should be regarded as sole carer for his four young children since their mother had lost mental capacity to care for them and the family faced the prospect of her becoming a psychiatric inpatient.
43. Were this evidence capable of bearing the necessary weight for a court to be able to reach such a conclusion as to the facts, it would indeed potentially affect the outcome of this case. But it is not. There is evidence in the medical records of Mr Veres' wife having been prescribed common antidepressant medication for a number of years. But aside from Dr Birch's report of a week or so previously, there is no medical or other professional evidence at all in these proceedings that Mr Veres' wife is seriously

mentally ill and incapable of mothering her children, much less that she approaches the threshold for being admitted as a psychiatric inpatient (voluntarily or otherwise). That is a matter requiring a professional judgment. There is none. There is not even any evidence that any action has been taken, further to Dr Birch's concerns or Mr Veres' fears, to refer his wife for psychiatric or psychological investigation, urgently or at all.

44. Put at its highest, this statement is capable of being accepted as evidence of Mr Veres' fears, and as building on Dr Birch's recent concerns. It is not capable of converting this into a sole carer case. And there are reasons not to put this evidence at its highest, aside from its brevity and preoccupation with Mr Veres' subjective feelings rather than factual detail about his wife's conduct and condition. They include Mr Veres' obvious investment in the outcome of this appeal, and the reasons recorded by the District Judge who saw him in person for finding him a witness capable of giving evidence in these proceedings which was '*simply beyond belief*'. There is also the matter of the District Judge's finding (which was not challenged in this appeal) that there is potential support available for this family from relatives living not too far away.
45. I do not, for these reasons, consider this evidence to pass the second limb of the *Fenyvesi* test, taken on its own. But I can hold it in mind, meanwhile, to the extent that it is capable of throwing any light on the key question of what I am to make of Dr Birch's evidence.
46. Dr Birch is an expert in the psychological dynamics of families under stress, with a particular specialism in the mental and emotional health of the children of such families. In her two addendum reports postdating the extradition hearing, she expresses unequivocal opinions about significant and deteriorating emotional problems and mental illness in the children of the family, and latterly in the mother, up to and including risk of self-harm and suicide, and indeed to the point of effective family breakdown. The diagnosis of '*extremely rare*' suicidal ideation in two primary school age children is particularly notable. She ascribes all of the problems she diagnoses to the continuing prospect of Mr Veres' extradition and impact of that prospect, and of extradition itself, on the family.
47. The issues arising with Dr Birch's evidence are as follows.
48. First, there is the fact, confirmed to me by Mr Clej (Counsel for Mr Veres), that, with limited exceptions (to which I turn below), the problems Dr Birch has diagnosed with this family have left no evidential footprint anywhere in the medical, educational or social work systems. There is no evidence at all in these proceedings from the children's school of attendance, behaviour or academic problems. Dr Birch herself records in more than one place the *children* as reporting themselves happy at school, subject to unremarkable incidences of occasional bullying. And there is no evidence that the parents have ever presented themselves or their children to their GP or any other source of support specifically with the conditions they reported to Dr Birch for the purposes of these proceedings.
49. The District Judge had noted the absence of any professional evidence not prompted by these proceedings at the hearing two years ago. It is an increasingly conspicuous absence. In the circumstances of Dr Birch's longitudinal assessment of severe and

worsening mental illness over a period of years, and the prompts to action provided by her three reports, no explanation is now offered, or suggests itself, as to why they seem to have left no trace outside these appeal proceedings. It is particularly remarkable that there is no other documented consequence of their parents' and Dr Birch's identification that two of their children were ill and distressed to the point of being suicidal, and that no other professional help is documented to have been sought with that 'extremely rare' – and indeed extreme – condition.

50. The exception to this picture to which Mr Clej referred me is a report dated 10th February 2023 following A's attendance with his father a few days previously at a hospital 'joint vision assessment clinic'. Mr Veres was recorded as having been concerned about A's headaches and that they might indicate migraine. The clinic was held jointly by a community paediatrician, a paediatric orthoptist and a teacher for vision impairment. A had by this time had a normal MRI scan, and further assessment of a possible neurodevelopmental disorder was considered '*not a priority*'. Possible issues around his vision and wearing of glasses at school were to be followed up by the teaching professional with A's school (it is not apparent whether this happened or with what result). Mr Veres was to monitor the headaches and take A to his GP if they got more persistent. The clinic had also considered A's emotional wellbeing, noting A's attachment to his father and '*high level of vigilance when he hears any conversation about the possibility of his father leaving the UK*', together with reported anxiety and sleep problems. The community paediatrician's conclusion was '*I am not certain that [A]'s difficulties would meet the threshold for services from either CAMHS [Child and Adolescent Mental Health Services] or Clinical Psychology*' but Mr Veres was given information about resources available in the community to help families under stress. No follow-up clinic appointment was arranged.
51. This report shows an occasion on which Mr Veres and his son discussed A's mental and emotional wellbeing, related to the prospect of extradition, in a professional context *not* directly related to these proceedings. It is not recorded that Dr Birch's report of the previous year was before the clinic, or that it was reported to them that A had been diagnosed with childhood PTSD with depressive features. The multi-agency clinic's own assessment was of emotional difficulties at a level not indicating referral to CAMHS or clinical psychology. That does not obviously support Dr Birch's overall assessment of the severity and, subsequently, progressive deterioration of A's mental condition. But it was after all a vision clinic. Dr Birch knew about this report; she references it briefly in her first addendum report but does not otherwise deal with its conclusions about A's mental health. I am not persuaded that this report materially assists my assessment of the weight I can attach to Dr Birch's addendum reports, other than by way of noting that it provides little direct support for them.
52. The second issue arising on this appeal in relation to Dr Birch's reports is the palpable tension, apparent on close reading of the reports, between what was reported to her (or what she observed first hand) directly from the children, and what was reported – in the children's presence – by their parents, and by Mr Veres in particular. The former is characterised by (a) largely positive or neutral reports of the children's own lives outside the home, (b) the children's expressions of closeness to and separation anxiety about their father and (c) presentation as either neutral to, or exhibiting symptoms of stress and anxiety about, the situation they found themselves in while under

observation. The latter is characterised by their parents' accounts of major family dysfunction.

53. That leads to further issues about Dr Birch's reports, and in particular her unqualified attribution of the family's diagnosed problems to the prospect of Mr Veres' extradition. There are two subsidiary points about this. The first is that, while A's visual disability, and associated vulnerability, is clearly relevant to this family's dynamic, Dr Birch does not make clear links between this fact and the family's diagnosed problems. It is the prospect of the family's separation from Mr Veres *per se* which is identified as their root cause. And the second is that nowhere in the reports do they deal squarely with the facts that they are heavily dependent on the parents' narratives but do not critically examine that dependency.
54. This is the problem the District Judge identified when she expressed her disappointment that Dr Birch had not dealt in her original report with what she called 'malingering' and the fact that Dr Birch's information had come not from independent sources but from parents who had a motive to exaggerate the position. The District Judge accepted Dr Birch's oral evidence that the children had not been *coached*. And in her first addendum report Dr Birch is explicit that it was absolutely clear to her that the children were expressing their own genuine feelings and there was no question of *malingering* or *making things up*. But this issue goes rather deeper than these brief references (and particularly the unfortunate use of the word 'malingering') suggest.
55. The real issue with Dr Birch's reports is not about whether the emotions and behaviours being expressed by the children were either 'genuine' or 'performative' in a simplistic binary sense. There are other questions which might have been expected to arise in a professional assessment of this family's dynamic apart from whether the children had been coached to play-act a part. Most obviously, there is the fact that the father of the family had just been tracked down by criminal law enforcement authorities having fled his country of origin in order to avoid having to go to prison. There is the fact that he has convictions for crimes of dishonesty involving the manipulation and exploitation of the vulnerable – whether street drug users or the people he knew whose houses he broke into and who had had reason to trust him. And there is the fact that, at the extradition hearing, the District Judge had found Mr Veres to be a man capable of telling 'beyond belief' untruths to courts to try to persuade them not to return him to serve his sentence.
56. In these circumstances, the real issue was not 'malingering' or even the coaching of the children, but the possibility that (a) what the parents, and particularly Mr Veres, were telling Dr Birch was unreliable and/or self-serving and (b) whether calculatedly or simply as a by-product of Mr Veres' clear focus on avoiding extradition, Mr Veres' children had picked up cues and suggestions from their parents that the family's fate depended crucially on what they said to Dr Birch about exactly how much they would miss their father. There is very little in Dr Birch's reports about how the vulnerability and natural separation anxieties of these little children, and their natural love, loyalty and suggestibility, had been handled by their parents in this context – beyond that startling account of boarding up a window to stop a little boy throwing himself out. There is nothing about any supportive preparation of their young family for a period of separation from a father ordered to go to prison and the management of the practical and emotional problems that *inevitably* go with this – problems always exacerbated when the prison is far away.

57. This is a surprising gap in a series of reports, prepared for extradition proceedings, by an expert in family dynamics. It is such an obvious issue, both intrinsically and in terms of calibrating what the children and the parents were saying in each other's company, in circumstances in which the impact on what appears otherwise to have been a close and thriving family is being put forward as the father's last hope of avoiding extradition. A court needs help to understand from an expert, in circumstances like this, what the impact of *extradition* will be on a family, as opposed to how that prospect is being managed within a family in the interim. Of course, the latter may be very relevant to the former, one way or the other. But they are not the same thing.
58. Standing back, then, to consider the weight that could be given to Dr Birch's evidence as a whole and its potential to alter the balance of the *Celinski* exercise, I start by recording the respect that is due to Dr Birch's qualifications and experience, and the District Judge's note that she withstood robust oral cross-examination. It is not difficult to accept that Dr Birch conscientiously recorded what she saw of the genuine stress, distress and fear of these young children in the face of the prospect of missing a father on whom they were emotionally dependent, for a period of time which they were too young to be expected to allow for. It is not difficult to accept that in her most recent report she obtained a strong impression of a young mother in a state of emotional distress at her predicament also.
59. But although Dr Birch's assessment is *expressed* unequivocally, including in terms of a family in crisis, the *weight* that can properly be placed on it in all these circumstances is certainly contestable, and contested. It raises questions, including about the basis on which it has been expressed quite so unequivocally, which can only be dealt with at this stage by limiting that weight.
60. Were a fresh *Celinski* exercise to be undertaken now with Dr Birch's addendum reports (and Mr Veres' new witness statement) included, there are many things that would be the same as they were when the case was before the District Judge. There remain heavily-weighted factors indeed in favour of extradition, about which nothing has changed. On the other side of the balance is the impact extradition will have on Mr Veres' family. The family will undoubtedly be adversely impacted. The question is one of degree, and whether the impact is something more than the inevitable trauma attendant on a young family missing a father at an important time in their lives. The *only* evidence from outside the family capable of establishing that it is, is Dr Birch's reports.
61. That is an *extrinsic* limit on the weight that can be placed on this evidence. It is unexplained how and why trauma, illness and dysfunctionality at the level Dr Birch describes has left almost no objective or professional trace in relation to the daily lives and wellbeing of any family member outside the home. The *intrinsic* limit on the weight that can be placed in it is twofold: the signs of distance between the cues provided by the children and by the parents in the assessments, and the reports' lack of exploration of the internal family dynamic and the *circumstances* in which Mr Veres has been facing extradition proceedings as a potential factor raising questions about the allowance needed to be made for them in the assessments.
62. In that sense, therefore, this is 'equivocal' evidence for the purposes of the *Fenyvesi* test. On the side of the balance against extradition are the *objective* factors of a wife

and four young children, one of whom is visually impaired, who are close to and emotionally dependent on Mr Veres. Their position, and their exposure to real damage to their wellbeing, does weigh significantly in the balance. At the same time there is no new evidence capable of displacing the District Judge's conclusion that the family would not be left without access to funds and to extended family support. There is no sufficient basis for concluding that the mother cannot care for the children; taken at its very highest Dr Birch concluded as recently as 5th October that the mother's mental health had deteriorated over the previous year, showed '*overt signs of clinical depression and suicidal ideation*', was a cause of concern and should be taken very seriously. But it seems it has not been taken seriously to the extent of seeking medical advice about it, and Mr Veres' witness statement cannot, for the reasons I have already given, bear the weight of establishing his wife's incapacity a matter of a week or so later.

63. The final question then is whether Dr Birch's evidence can bear the weight, additional to these factors, that would be necessary to bring the balance down to a conclusion that the impact on the family, especially the children, would be *disproportionate* to the weight of considerations in favour of extradition. I am not in the end persuaded that it can. It stands strangely alone in a landscape in which one would expect to see not just other professional evidence but urgent professional interventions. The higher its diagnostic register the more problematic this isolation appears. And it leaves unhelpfully unaddressed the obvious issue of its dependence on the parents' reporting and the possible distorting effect of a family dynamic driven by overt litigation imperative.
64. The *Celinski* exercise in Art.8 cases is at root an acknowledgment of both the inherent potential for family trauma in any extradition case in which young children are involved, as well the fact that a parent's offending and fugitivity is ultimately the root cause of the predicament those children face. I have reminded myself of the guidance not only in *Celinski* but also in the earlier Supreme Court decisions in *Norris v USA* [2010] UKSC 9 and *HH v Italy* [2012] UKSC 25, and indeed of the succinct summary set out by Dingemans J (as he then was) at [16] in *Palioniene v Lithuania* [2019] EWHC 2096 (Admin). The interests of children of a family are '*a primary consideration*' – albeit not '*the primary consideration*' nor '*the paramount consideration*'. In a conviction case involving a significant sentence for exploitative offending, where the requested person has founded family life in the UK on fugitivity and there are no materially weighty procedural reasons to do otherwise, the *degree* of impact on family life which must be shown in order to inhibit extradition must be something appreciably more than that inevitably involved in family separation.
65. I bear also in mind what is said at [132] of *HH*:

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).

66. I can certainly accept that family separation in this case can be expected to include harshness, hardship and harm for an innocent and to a degree vulnerable family. On the other side of the *Celinski* balance, Mr Veres' offending caused harshness, hardship and harm to his victims and to the social structures in which they were committed. The impact on families of extended appeal procedure may itself prolong or exacerbate the harshness and harm. That is why the *Fenyvesi* test is drafted so as to discourage protracted litigation based heavily on contestable opinion evidence of incremental deterioration postdating the extradition decision, and to limit the admission of late evidence to that which is sufficiently unequivocal and weight-bearing to indicate a change of outcome.
67. The late evidence in this case is not of that nature. For the reasons I have given, I am unable to regard Dr Birch's evidence – alone or in combination with such other evidence as is before me – as establishing sufficiently robustly that the effect on Mr Veres' family would be of an order of magnitude sufficient to have produced a non-custodial outcome had Mr Veres been sentenced here, or to bear the weight necessary to bring the *Celinski* balance down on the side of disproportionality in this case.
68. In coming to that conclusion, that is in no way to minimise or underestimate the weight that can and must properly be entered into account against separating this family on any basis. Mr Veres' extradition to face justice will deprive four young children, one with congenital visual impairment, of the company and support of a much-loved father at a key stage in their lives. That is a proper and weighty consideration on its own. But it is not one which *on the evidence before me now* can, for the reasons I have given, fairly be regarded as, singly or in combination with any the other factors against extradition in this case, outbalancing the weighty factors supporting extradition, so as to be determinative of this appeal in Mr Veres' favour.

Decision

69. The applications to admit new evidence are refused. It does not pass the *Fenyvesi* test. On the working assumption that I had admitted this evidence and conducted a

fresh *Celinski* balancing exercise, I am satisfied that should not, in all the circumstances, have led to a different outcome.

70. In circumstances in which I have been given no sufficient basis either for concluding that the mother cannot or will not be able to parent her children, or for revisiting the District Judge's assessment that wider family support is available, I am unpersuaded that there is any purpose to be served by adjourning this appeal in order to obtain a social services report on what must necessarily be a speculative basis.
71. Mr Veres' appeal is dismissed.