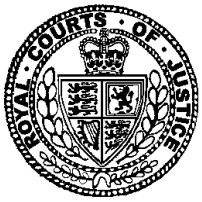

Neutral Citation Number: [2024] EWHC 499 (Admin)

Case No: AC-2023-LON-000184

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/03/2024

**Before** :

**MR JUSTICE JULIAN KNOWLES**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **MARINA HORVATH** | **Appellant** |
| **- and –** | |
| **CENTRAL DISTRICT COURT OF BUDA, HUNGARY** | **Respondent** |

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**Graeme L Hall** (instructed by **Dalton Holmes Grey Solicitors**) for the **Appellant**
**Amanda Bostock** (instructed by **CPS**) for the **Respondent**

Hearing dates: 17 January 2024

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# Approved Judgment

This judgment was handed down remotely at 10:30 on 13 March 2024 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, in form at least, a statutory appeal under Part 1 of the Extradition Act 2003 (EA 2003) with the leave of Farbey J. The decisions appealed against are as follows:

    a. that of District Judge Fanning, dated 19 April 2021; and

    b. that of District Judge Griffiths, dated 13 March 2023.

2. The Appellant's extradition is sought pursuant to a European Arrest Warrant (EAW) dated 30 July 2019 and certified by the National Crime Agency (NCA) on 28 August 2019.

3. The Appellant is represented by Mr Hall and the Respondent by Ms Bostock. I am grateful to both of them.

4. The EAW seeks the Appellant's extradition to Hungary for her to stand trial in relation to her role in a conspiracy to defraud which was operated from the UK. It is alleged that the Appellant and others targeted elderly people in Hungary by telephone between December 2018 and June 2019, telling them their grandchild had been in a car accident and that they needed to send money immediately to pay for the damages and/or to avoid police involvement and/or to avoid their grandchild being hurt. In fear, the elderly victims would hand over cash or valuables to someone already waiting outside their property. Over £40,000 was stolen from twelve individuals aged between 70 and 96 years old and sent to the Appellant and her fellow participants in the fraud to fund their lifestyles in the UK. The Appellant is also sought for a thirteenth offence of laundering 2,933,000HUF (£7,200) of the proceeds.

5. The maximum sentence is 10 years' imprisonment. Twenty-two other people have been charged with related offences in Hungary, including the Appellant's husband who, whilst initially opposing extradition in this country, ultimately withdrew his appeal and has been extradited to Hungary. There were extradition proceedings here in relation to other co-accused.

6. The Appellant's discharge was ordered by District Judge Fanning on the grounds that extradition would be incompatible with her rights under Article 8 of the European Convention on Human Rights (the ECHR). Other grounds of challenge, including that the Hungarian judiciary lacked independence, such that it can no longer be considered an issuing 'judicial authority' under extradition legislation, and that extradition was barred by s 13(b) of the EA 2003 (extraneous considerations, namely prejudice at trial arising from her Roma ethnicity) were rejected.

7. The Respondent sought leave to appeal against the Appellant's discharge. The Appellant sought to cross-appeal.

8. On 19 January 2022, Fordham J granted the Respondent leave to appeal. His order provided that:

a. The Appellant withdraws her cross-appeal on the basis that, if the Respondent's appeal were allowed, the matter remitted and extradition ordered, that would be the appropriate time to seek leave to appeal on the grounds on which she lost: see *Government of the United States of America v Assange* [2021] EWHC 2528 (Admin), [31].

b. The Appellant was discharged from the proceedings in relation to the other defendants.

9. Thereafter, in a series of judgments, Fordham J refused the other defendants leave to appeal: see [2022] EWHC 224 (Admin); [2022] EWHC 273 (Admin); [2022] EWHC 1024 (Admin); and [2022] EWHC 2032 (Admin).

10. On 7 December 2022, Lane J heard the Respondent's appeal regarding this Appellant. He allowed the appeal, and remitted the matter back to the magistrates' court under s 29(5), EA 2003: see [2022] EWHC 3483 (Admin).

**The remitted extradition proceedings**

11. On 13 March 2023, the remitted extradition hearing took place before District Judge Griffiths. The judge refused an application to set directions for the service of further evidence relating to the challenges which District Judge Fanning had dismissed in April 2021. She ordered the Appellant's extradition.

12. The Appellant's counsel's note of District Judge Griffiths' *ex tempore* ruling is as follows (this has not been challenged as inaccurate by the Respondent):

> "I am dealing with an application on behalf of Ms Horvath to essentially adjourn this case to enable further inquiries to be made in relation to issues that were raised at the extradition hearing which took place before DJ Fanning at the hearing on 19 April 2021. Specifically in relation to those issues which go to Roma discrimination in Hungary. Mr Hall states that legal aid has been granted recently; limited time has been available to instruct an expert and identify fresh evidence; but there are number of reports some of which he refers to that are critical of Roma treatment within the court system. And that he ought to be afforded more time to instruct an expert and carry out further research to see whether [the defence] can adduce fresh evidence on these issues. He relies on *Gurau* (*Suceava District Court, Romania v Gurau* [2023] 1 WLR 2813) as being authority to permit him to do this.
>
> First, when I consider s.29(5)(c) of the Act, I find that that is clear that the appellate court must direct the judge to proceed as they would have been required to do if they had decided the relevant question differently: in this case the art 8 issue. In relation to Dempsey, that was relating to a new issue not previously raised. In Gurau at [59], Holroyde LJ

stated that in his view that it does not prohibit a DJ from receiving fresh evidence if it is appropriate to do so in accordance with usual principles. Dempsey was to raise a new issue. He goes on to state that:

> 'It is in my view permissible in principle for a requested person, at the hearing following remittal, to apply to the DJ to adduce fresh evidence on an issue which had previously been argued but in relation to which it could be said that fresh evidence, which might be decisive on that issue, had become available since the extradition hearing. Cases in which such an application will succeed may well be few in practice.'

I agree with Ms Bostock that first there is a difficulty in this case in that the judge is no longer an appropriate judge and asking Judge Fanning whether or not fresh evidence would have made a difference to his decision is not possible. I agree with Ms Bostock [that this] is asking for a judge to look at Judge Fanning's decision and the evidence before him and fresh evidence to decide whether or not it would be decided differently. I am not an appellate court. I cannot as a first instance judge decide whether or not a former colleague would have decided a question differently. That is for an appellate court. It may be that it would be different if the judge was available. But that's not [the case] here. There is an alternative remedy. It is problematic. I agree that even if it is available, the judge is no longer an appropriate judge. I cannot sit as an appellate court of his decision. I would have to therefore have all his evidence as it was before him together with fresh evidence, hear re-litigation of the original argument and then the fresh evidence. That's the for the appellate court.

Even if I am wrong, I cannot see where the authority is other than the quote in *Gurau* that gives me permission to do this. There is no power [in the Act]. I simply have to proceed as in *Assange* and other cases as if that question was decided differently, and not receive fresh evidence in relation to other matters. No powers that say I can do that. While I accept that *Gurau* says it is permissible, I cannot see how or why that conclusion is reached.

Even if wrong about that, and there is power to do so, I go on in [59]:

> "It is in my view permissible in principle for a requested person, at the hearing following remittal, to apply to the DJ to adduce fresh evidence on an issue which had previously been argued but in relation to which it could be said that fresh evidence, which

> might be decisive on that issue, had become available since the extradition hearing. Cases in which such an application will succeed may well be few in practice."
>
> While Mr Hall says that he hasn't had time to get the evidence, even if an expert is obtained, it will rely on open source material in relation to criticisms of the systems in Hungary. Again, I agree with Ms Bostock there is no international consensus on this issue. I find that the reports such as they are that Mr Hall refers to are far from what Holroyde LJ refers to as might be decisive. The word decisive is important. There may well be further evidence but these reports would be far from evidence [that is] decisive on the issue. On that basis, I find that the application fails. I refuse the application to adjourn for more time to secure fresh evidence.
>
> In those circumstances, I proceed to in relation to the remittal and do as exactly as I was directed to do, which is to order the extradition of Ms Horvath to Hungary pursuant to s.21A(5) EA."

**Grounds of appeal**

13. The three grounds on which leave was granted by Farbey J are as follows.

    a. Ground 1: the 13 March 2023 ruling of District Judge Griffiths should be quashed, and the case remitted to the magistrates' court;

    b. Ground 2a: the 19 April 2021 ruling of District Judge Fanning ordering extradition was wrong in the light of fresh evidence that the Respondent is not a judicial authority for the purposes of s 2(2) of the EA 2003;

    c. Ground 2b: The 19 April 2021 ruling of District Judge Fanning was wrong to conclude that the Appellant does not face a real risk of prejudice due to her Roma ethnicity, contrary to s 13(b) of the EA 2003.

14. As I shall explain, Grounds 2a and 2b have now fallen away and I am only concerned with the substance of Ground 1.

**Preliminary point: statutory appeal or judicial review re Ground 1 ?**

15. Mr Hall submitted at the outset that the proper procedural route for the Appellant's challenge under Ground 1 is judicial review rather than a statutory appeal under Part 1 of the EA 2003. He therefore invited me to treat the current appellant's notice as an application for judicial review under CPR Part 54, and to grant permission and quash the decision in question. He pointed me to other extradition cases where this had been done.

16. He explained that a statutory appeal under Part 1 of the EA 2003 can only be allowed (*per* s 27(3)) where the district judge should have decided a question before him at the

extradition hearing differently, and that if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

17. The question articulated in Ground 1 of the Amended Grounds of Appeal at [10] is whether District Judge Griffiths was wrong to refuse to set directions for the service of further evidence relating to the challenges previously dismissed by District Judge Fanning, including whether she wrongly applied *Gurau*. However, even if this issue had been resolved in the Appellant's favour by the district judge, it would not have required her to order the Appellant's discharge. Rather, it would merely have required her to set directions for the service of further evidence and to adjourn the hearing.

18. On behalf of the Respondent, Ms Bostock agreed that judicial review was the appropriate procedural route in relation to Ground 1 but submitted that I should, in my discretion, refuse the Appellant's application because the point had first been flagged up by her in April 2023, and so the challenge had not been brought promptly and in any event within three months, as required by CPR r 54.5(1), it having only been made by the Appellant in January 2024 when Mr Hall filed his Skeleton Argument.

19. I agree with Mr Hall that I have the power to treat a statutory appeal under Part 1 as an application for judicial review. Such a course was taken by the Divisional Court in *Olah v Regional Court in Plzen, Czech Republic* [2008] EWHC 2701 (Admin), where the challenge was to a refusal to adjourn. Moses LJ said at [6]-[8]:

> "6. In my view it was wrong of the judge to refuse the adjournment …
>
> 7. The question then arises as to what this court should do. We have been greatly helped by frank, careful and sympathetic submissions advanced by Miss Barnes. She pointed out that the jurisdiction of this court under the 2003 Act is limited by the provisions of Section 26 and Section 27. This court has no jurisdiction merely to send the case back to the district judge because the question of an adjournment would not necessarily lead to the conclusion as to extradition to be decided differently. It is purely interlocutory and it may or may not lead to a successful argument pursuant to Section 25 (see Section 27 (3) and (4)).
>
> 8. In those circumstances there is no remedy for the appellant's complaint under the 2003 Act. But, as Miss Barnes helpfully points out and accepts, that is not the end of the matter. Section 34 of the 2003 Act does not oust the court's jurisdiction by way of judicial review. There are no judicial review proceedings before this court. But I would nevertheless regard the appeal documents in this case as an application for judicial review. I would, for the reasons I have already given in relation to the refusal of an adjournment, grant permission to the appellant to bring proceedings for judicial review and indeed grant judicial

> review of the decision of the district judge of 3 June to refuse an adjournment."

20. The course taken in *Olah* was followed by Dove J in *Celczynski v Polish Judicial Authority (No 1)* [2020] 4 WLR 21.

21. I also agree with Mr Hall that judicial review is the appropriate route in this case because the decision under challenge would not have led to the Appellant's discharge even if it had been answered in the way she says it should have been, and so the condition in s 27(3) cannot be satisfied. A decision favourable to the Appellant would only have led to the setting of directions for the service of evidence and an adjournment for that to be done.

22. I therefore treat the appellant's notice as an application for judicial review of the decision of District Judge Griffiths of 13 March 2023, and I grant permission. Grounds 2a and 2b therefore fall away, and the Appellant's statutory appeal under Part 1 of the EA 2003 is dismissed. Mr Hall accepted that would be the outcome if I acceded to his application to treat the appeal as a judicial review in relation to Ground 1.

23. I decline to refuse permission on the basis that the challenge has not been brought promptly. In my judgment, the interests of justice require the substance of the Appellant's challenge to that decision to be examined. There is no prejudice to the Respondent, and Ms Bostock did not suggest that there was.

**The decision of District Judge Griffiths: discussion**

24. I am satisfied that the substance of the district judge's reasoning for refusing to set directions following the remittal of the case to her was wrong. I will discuss later in this judgment what consequences flow from this, and what the outcome of this judicial review should be.

25. In *Gurau* an EAW was issued by a court in Romania seeking G's extradition for the purposes of serving a sentence of imprisonment which had been imposed in respect of five offences. He was subsequently charged in Romania with a further offence, but no EAW was issued in respect of that offence.

26. He was arrested in the UK pursuant to the EAW. He resisted his extradition on various grounds, including that it was barred under ss 11(1)(f) and 17 of the EA 2003 by reason of the specialty rule. The district judge ordered the requested person's discharge on the sole ground of specialty, finding that although Romania did have specialty arrangements the presumption that it would comply with them was rebutted by reason of G's ongoing prosecution in respect of the further offence. The requesting court appealed under s 28 of the EA 2003 against the decision to discharge G, who sought to cross-appeal on the ground that he should in any event have been discharged on two grounds which the district judge had rejected.

27. The Divisional Court (Holroyde LJ and Jay J) allowed the appeal and declined jurisdiction in relation to the cross-appeal.

28. The relevant parts of the appeal concerned ss 28 and 29(3)(b) of the EA 2003:

"*28 Appeal against discharge at extradition hearing*

(1) If the judge orders a person's discharge at the extradition hearing the authority which issued the Part 1 warrant may appeal to the High Court against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 41.

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

(4) An appeal under this section -

(a) may be brought on a question of law or fact, but

(b) lies only with the leave of the High Court.

(5) Notice of application for leave to appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order for the person's discharge is made.

...

*29 Court's powers on appeal under section 28*

(1) On an appeal under section 28 the High Court may—

(a) allow the appeal;

(b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that -

(a) the judge ought to have decided the relevant question differently;

(b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the judge deciding the relevant question differently;

(c) if he had decided the question in that way, he would not have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) quash the order discharging the person;

(b) remit the case to the judge;

(c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.

(6) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.

(7) If the court allows the appeal it must remand the person in custody or on bail.

(8) If the court remands the person in custody it may later grant bail."

29. I can summarise the relevant parts of the *Gurau* judgment as follows:

a. on a true construction of ss 28 and 29(3)(b), a defendant who had been discharged by a district judge at an extradition hearing had no entitlement to appeal, or apply for leave to appeal, against any decisions at the extradition hearing which were adverse to him;

b. that, rather, where the judge at the extradition hearing had ordered the defendant's discharge, the only avenue for appeal was that given to the judicial authority by s 28, which appeal was limited to challenging the 'relevant decision' in favour of the defendant which had resulted in his discharge;

c. thus, that on an appeal by the judicial authority under s 28, the focus was on the effect of altering the decision on the 'relevant question' (ie, the question on which the judge's decision had resulted in the requested person's discharge) alone, not on the effect of altering the decisions on both the relevant question and one or more questions which had been before the judge at the extradition hearing;

d. it therefore followed that the court had no jurisdiction to hear the cross-appeal by G in the present case;

e. and that, accordingly, the order discharging G would be quashed and the case remitted to the district judge with a direction to proceed as he would have been required to do if he had decided the specialty question differently at the extradition hearing.

30. In the course of reaching these conclusions the Court considered the decision in *Dempsey v Government of the United States of America* [2020] 1 WLR 3103. In that case there had been an earlier appeal by the Government against a decision of a district judge discharging the defendant on the ground that the specified offence was not an extradition offence. The High Court had allowed that appeal and remitted the case to the district judge under s 106(6) of the EA 2003. On remittal, the defendant had for the first time sought to argue that his extradition would be incompatible with his rights under Article 3 of the ECHR. The district judge ruled that he had no jurisdiction to determine that issue, and the defendant appealed.

31. The High Court dismissed the appeal, holding that the district judge had been correct to decline to hear evidence or argument on a bar to extradition which had not been raised at the extradition hearing. The court referred to the requirement for the district judge, on remittal, to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing. It noted at [21] that other statutory provisions make plain that, where the High Court has returned a question for re-decision and the judge below has reached the same decision as before, no new issues may be raised. The Court said at [22]:

> "It would be odd indeed if Parliament had limited the judge if the question is decided in the same way, but gave free rein … to entertain arguments on bars to extradition not raised at the extradition hearing if he or she decides it differently. The expectation is that all matters in issue would be resolved at the extradition hearing with all disputed matters resolved at a subsequent appeal and then the matter returned to the judge for final disposal."

32. The Court continued at [24]:

> "In our judgment, the key to understanding what the judge is required to do is in what is meant by 'the extradition hearing' in that phrase. It is not a reference to a hypothetical extradition hearing, but the extradition hearing that occurred and gave rise to the appeal. The judge must proceed as he or she would have done at the earlier extradition hearing if the question had been determined differently. In September 2017 had the judge decided the extradition offence issue differently under section 78, he would not have considered any further bars to extradition beyond those raised by the appellant, but taken the step required of him at the end of the process. He would have sent the case to the Secretary of State."

33. Later, the court made observations about the undesirability of a piecemeal approach to issues, saying at [28]:

> "At the extradition hearing the judge considered the extradition offence issue and decided it in favour of the appellant. As a result, he was required by section 78(6) to order the appellant's discharge. Although it might theoretically have been possible to stop there, the language of the 2003 Act does not require the judge to go no further. The judge 'must proceed' to the next statutory provision in the event that he decides any issue against the requested person but that language does not mean the judge must not proceed to determine other, indeed all, issues that do or may arise in the case before him. There is no impediment to deciding all issues. On the contrary, it would be inconsistent with proper case management, to common sense and to usual practice not to do so. A piecemeal approach could result in multiple appeals and hearings which is incompatible with the scheme of the 2003 Act."

34. Returning to the decision in *Gurau,* at [51]-[54] the Court said:

> "51. The advantages of all issues arising from an appeal being determined at the same time, and the undesirability of determining the issues in a piecemeal fashion, are obvious. It would undoubtedly be convenient to be able to interpret the statutory provisions in such a way as to permit a cross-appeal. I am, however, unable to do so.
>
> 52. As counsel have pointed out, the Act does not contain any specific provision which entitles the respondent to cross-appeal within this appeal, and consequently there are no relevant procedural rules and requirements in the Criminal Procedure Rules. In a Part 1 case in which the judge at the extradition hearing has ordered the discharge of the requested person, the only avenue of appeal is that given by section 28(1) to the judicial authority; and that is limited to an appeal against the relevant decision which, by section 28(3) of the Act, is the decision in favour of the requested person which resulted in his discharge. It is in my view impossible to read into that section any entitlement on the part of the requested person to appeal, or to apply for leave to appeal, against any decisions at the extradition hearing which were adverse to him. Nor, in my view, is it permissible to adopt the approach, suggested as a possibility in *Government of Turkey v Tanis* [2021] EWHC 1675 (Admin) (in the context of materially-identical provisions in Part 2 of the Act), of reading a right of appeal into the condition stated in section 29(3)(b). That condition is only met if the result of deciding the relevant question

> differently is that the judge would not have been required to order the requested person's discharge. The focus, in my view, is on the effect of altering the decision on the relevant question alone: not on the effect of altering the decisions on both the relevant question and one or more other questions which were before the judge at the extradition hearing but form no part of the appeal.
>
> 53. The issue in *Dempsey v USA* [2020] 1 WLR 3103 was whether a respondent, on remittal to the judge following an appeal determined against him, could raise for the first time an issue which had not been considered at the extradition hearing. I respectfully agree with the court's decision on that issue; but I do not think it undermines the conclusion I have reached as to whether a respondent can cross-appeal on issues which were before the court at the extradition hearing.
>
> 54. In short, this court in my judgement has no jurisdiction to hear a cross-appeal by the respondent. It is for Parliament to decide whether amendment of the statute, to permit such an appeal, is desirable. It follows that it is in my view neither necessary nor appropriate for this court to consider the submissions as to the respondent's proposed grounds of cross-appeal, which the parties helpfully provided in case the court reached a different conclusion as to jurisdiction."

35. The Court then said at [58]-[60], in a passage which is important for the purposes of the issue before me:

> "58. Mr Summers raised concerns as to the consequences of the decision in *Dempsey v USA* [2020] 1 WLR 3103 in cases in which a requested person wishes to raise, at the hearing following remittal, either fresh evidence on issues decided against him at the original hearing, or a completely fresh bar to his extradition.
>
> 59. As to the first of those situations, *Dempsey v USA* does not in my view prohibit a DJ, at the hearing following remittal, from receiving fresh evidence relevant to an issue argued at the extradition hearing if it is appropriate to do so in accordance with usual principles. As I have noted, the court in *Dempsey v USA* was considering an attempt to raise, at the hearing following remittal, an issue which had not been raised at all in the extradition hearing. In the passage which I have quoted at para 36 above, the court distinguished between bars to extradition which had not been raised at the extradition hearing, and the matters in issue which it expected would be resolved at the appeal. It is in my view permissible in principle for a requested

> person, at the hearing following remittal, to apply to the DJ to adduce fresh evidence on an issue which had previously been argued but in relation to which it could be said that fresh evidence, which might be decisive on that issue, had become available since the extradition hearing. Cases in which such an application will succeed may well be few in practice.
>
> 60. In the second situation, the defendant (as I have said at para 55 above) will have following the remittal hearing a right of appeal pursuant to section 26 of the Act. As part of that appeal, he will be able to raise an entirely new issue where it is appropriate to do so in accordance with well-established principles. By section 27(2) of the Act, the court hearing that appeal will have the power to allow his appeal if he can satisfy the criteria in section 27(4), namely that:
>
> > '(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
> >
> > (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
> >
> > (c) if he had decided the question in that way, he would have been required to order the person's discharge.'
>
> Such cases may well be infrequent, but when they arise the requested person will not be without remedy."

36. The reference in [59] to the 'usual principles' is obviously a reference to the principles set out in the well-known cases of *Zabolotnyi v Mateszalka District Court, Hungary* [2021] 1 WLR 2569 and *Szombathely City Court v Fenyvesi* [2009] 4 All ER 324 on when 'fresh evidence' ought to be received. One of the requirements is that the new evidence be 'decisive' – the word used in [59].

37. In my judgment, it follows from [58] of *Gurau* that the district judge was wrong for the reasons she gave up to and including the sentence, 'While I accept that *Gurau* says it is permissible, I cannot see how or why that conclusion is reached', to decline to set directions for the receipt of evidence on the issues which the Appellant wished to argue following remittal, namely the status of the Hungarian judiciary and the whether the bar in s 13(b) was made out. She was not being asked to act as an appellate judge in relation to District Judge Fanning's decision, as she appeared to have thought. When the Court of Appeal has a criminal appeal referred to it by the CCRC on the basis of fresh evidence, it is not sitting as an appeal court from the first decision of that Court dismissing the appeal, it is determining the matter afresh on the basis of fresh material. Thus, District Judge Griffiths was simply being asked by the Appellant to exercise the power which *Gurau* established that she had to consider whether to receive further or fresh evidence

on issues which had been adversely determined. Nor was the fact that District Judge Fanning no longer available to hear the remitted case relevant (he having been promoted to the Circuit Bench).

38. Although she said that she did not see how the conclusion in *Gurau* had been reached, in my judgment its reasoning was clear, and it was binding upon her, and she ought to have followed it.

39. I also regard *Gurau* as binding on me. Ms Bostock sought to argue that the passage from [58]-[60] was *obiter* and not so binding (see Skeleton Argument, [20]). I disagree. It was a considered passage in which the Divisional Court (presided over by the Lord Justice who was at the time in charge of the extradition list in the High Court) was obviously intending to give guidance for future cases. If this passage is *obiter* or *per incuriam*, then it must be for the Divisional Court or the Supreme Court to say so.

**Consequences**

40. Although I have concluded that the district judge's reasons for not setting directions were wrong, that is not an end of the matter. I still have to consider whether any relief should be granted. I bear in mind s 31(2A) of the Senior Courts Act 1981 (alluded to by the Respondent in [26] of its Skeleton Argument):

> "(2A) The High Court—
>
> (a) must refuse to grant relief on an application for judicial review,
>
> …
>
> if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred."

41. I also bear in mind, in relation to this provision, that there is a 'high threshold' to be surmounted before it can be properly applied: see eg *R (Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214, [273].

42. Ms Bostock submitted, in essence, that an adjournment would have achieved nothing because there is no, or no sufficient evidence to show either that the Hungarian judiciary lacks independence so as to undermine its status in relation to extradition (see *Bogdan v Judge of Law Enforcement at Veszprem Regional Court, Hungary* [2022] EWHC 1149 (Admin)) or that there is a real risk that the Appellant would not receive a fair trial because of her Roma ethnicity, so as to bar her extradition under s 13(b) of the EA 2003. Accordingly, she said s 30(2A) applied.

43. In support of his case that there is further material which could be put before the magistrates court by way of fresh evidence on the rule of law and s 13(b) issues, Mr Hall argued at [46] of his Skeleton Argument:

> "46. First, in dismissing the section 13(b) EA argument, Judge Fanning noted that Ms Horvath, as a Roma national,

> faces particularly serious prejudice in Hungary which is being fomented by politicians: Judgment at [79] and [87]. At that stage, in April 2021, he was of the view that the courts would offer the requisite protection. However, by the time of the hearing before Judge Griffiths, two years had passed. The EU had ramped up its criticism of Hungary. The Appellant was able to point to the Resolution of the European Parliament on 15 September 2022, which referred to Hungary as an "electoral autocracy", and which raised concerns as to "the independence of the judiciary and of other institutions and the rights of judges" as well as "the rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities". Given that the EU Parliament has authoritatively concluded since Judge Fanning's Ruling that the Hungarian government expresses significant prejudice towards Roma, and that it also impermissibly meddles in the judicial system by appointing government-friendly judges, it cannot reasonably be concluded that it is highly likely that the final decision would be the same.
>
> 47. Second, and in any event, such an assessment is plainly premature. Where the Appellant has been able to put forward a basis, which is not 'bogus' (the term used on *Olah* at [6]), she is entitled as a matter of fairness and per *Gurau* to be given an adequate opportunity to investigate the matter. This chimes with Dove J's conclusion in *Celczynski* at [25]."

44. The reference to the European Parliament is to the *European Parliament resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded* (OJ, 5.4.23, C 125/463. This urged the Commission to take action against Hungary because of its concerns about the break down of the rule of law and the emergence of an elected autocracy. The Resolution called on the European Council and the Commission to take various actions against Hungary.

45. Recitals Z, CU and CV of the Resolution stated:

> "Z. whereas on 13 July 2022, the Commission indicated in the country chapter on Hungary of the 2022 Rule of Law Report that as regards judicial independence, concerns expressed in the context of the Article 7(1) TEU procedure initiated by the European Parliament, as well as in previous Rule of Law Reports, remain unaddressed, as was the case for the relevant recommendation made under the European Semester; whereas these concerns relate in particular to the challenges faced by the independent National Judicial Council (NJC) in counter-balancing the powers of the President of the National Office for the Judiciary (NOJ), the

rules on electing the President of the Supreme Court (Kúria), and the possibility of discretionary decisions as regards judicial appointments and promotions, case allocation and bonuses to judges and court executives; whereas as regards efficiency and quality, the justice system performs well in terms of the length of proceedings and has an overall high level of digitalisation, and whereas the salaries of judges and prosecutors continue to increase gradually; whereas on 26 August 2022, several civil society organisations requested that the minister of justice address problems of the Hungarian judiciary after conducting wide-ranging consultations with the general public and experts, including self-governing and representative organs of the judiciary and the Venice Commission;

…

CU. whereas in its concluding observations of 6 June 2019 on the combined 18th to 25th periodic reports of Hungary, the UN Committee on the Elimination of Racial Discrimination indicated that it was deeply alarmed by the prevalence of racist hate speech against Roma, migrants, refugees, asylum seekers and other minorities, which fuels hatred and intolerance and at times incites violence towards such groups, in particular from leading politicians and in the media, including on the internet; whereas, in particular, the committee was deeply alarmed at reports that public figures, including at the highest levels, had made statements that may promote racial hatred, in particular as part of the government's anti-immigrant and anti-refugee campaign that began in 2015, and at the presence and operation of organisations that promote racial hatred; whereas while taking note of the information provided on measures taken to improve the situation of Roma, including in the fields of health and education, as well as through the national social inclusion strategy of 2011, the committee remained highly concerned at the persistence of discrimination against Roma and the segregation and extreme poverty that they face;

…

CV. whereas in its fifth opinion on Hungary adopted on 26 May 2020, the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities indicated that while Hungary had maintained its policy to support national minorities based on a solid legislative framework, it remained necessary to address structural difficulties faced by Roma in all spheres of public and private life, including education, employment, housing

> and access to healthcare; whereas the committee emphasised that urgent measures need to be taken in order to remedy the Roma situation, combat early school leaving and promote inclusive and quality education, including in segregated areas; whereas it further pointed out that in disadvantaged regions, there is a need for stronger complementarity between national and local policies so as to provide long-term solutions to employment and housing problems, while access to healthcare and social services remains subject to serious practical obstacles, mainly to the detriment of Roma women and children;"

46. In my judgment this falls a long way short of establishing any sort of sufficient evidential basis that would have provided a proper foundation for District Judge Griffiths adjourning the hearing to allow the Appellant to explore the possibility of further evidence. It follows that the core of her reasoning at the conclusion of her judgment:

> "I find that the reports such as they are that Mr Hall refers to are far from what Holroyde LJ refers to as might be decisive. The word decisive is important. There may well be further evidence but these reports would be far from evidence [that is] decisive on the issue."

47. The questions of judicial independence in Hungary, and whether there is a risk of unfair trials for Roma people, were considered extensively in the judgments of Fordham J which I referred to earlier and which, I repeat, concerned the same offence for which the Appellant's extradition is sought. In [2022] EWHC 2032 (Admin), [19]-[20] he recorded the submission:

> "19. That brings me to what, in my judgment, is really the headline point in this case. It concerns the specific features of the Hungarian authorities' prosecution, for the alleged index offences, of the group of defendants who are facing trial, including these requested persons.
>
> 20. In their helpful skeleton argument, Ms Westcott, Ms Nice and Ms Collins provided me with a list of specific concerns which they say flow from the nature of the case intended to be prosecuted in Hungary. They refer to the following features. The Roma ethnicity of the requested persons as defendants at the trial, as being among the most vulnerable in Hungarian society. The prosecution as relating to an alleged organised criminal group allegedly led by these Roma defendants, a population more vulnerable to discrimination. The press coverage, increasing the risk of undue pressure. The cases being more likely eventually to be elevated to the more senior courts where there is a greater risk of influence on independence of the relevant judiciary. The fact that the requested persons themselves have repeatedly and jointly asserted that they will be treated

> unjustly if extradited. Those claims alone will mark them out for unfavourable attention. The arguably lower effectiveness of possible remedies of protection in the event of experiencing any bias or procedural impropriety, or any perception of bias or procedural impropriety, because of the unattractive nature of the cases. The fact that the ombudsman would have less of an appetite to confront the government in these cases."

48. There was massive citation of expert materials and authority in this and his other decisions. None of the defendants' complaints were upheld. It is clear Fordham J regarded all of the issues raised as having been finally determined. He said at [24]:

> "24. In light of all the materials, and considering it as a whole, there is no realistic prospect that the Court at a substantive hearing would find that the Stage 2 test [in *Aranyosi*] is satisfied, and that there is a real risk of a flagrant breach of Article 6 fair trial rights in these specific cases. The section 2 and Article 5 argument fail for the same reason. The section 2/Article 6 ground of appeal is not reasonably arguable. I will refuse permission to appeal. As the fresh evidence relied on is incapable of being decisive, I will formally refuse permission to rely on it. As I will record in a recital to my Order, this is the final issue before the Court so that these cases are now finally determined by this Court."\

49. Whilst it post-dates Fordham J's judgment by two months, there is nothing in the European Parliament resolution which is capable of undermining these conclusions. I do not accept Mr Hall's submission that with further time the Appellant might have been able to assemble potentially decisive evidence. Between March 2023, when District Judge Griffiths gave her ruling, and January 2024, when the hearing before me took place, the only piece of evidence obtained by the Appellant was the Resolution. I do not accept that lack of legal aid is an explanation. There was ample legal aid available for the hearings before Fordham J, but even with that the evidence assembled was insufficient.

50. It follows that whilst I conclude that the District Judge's reasons for refusing to set directions for further evidence and refusing to adjourn were wrong, her final overall conclusion was correct, and the order for the Appellant's extradition was rightly made. Further time would have been most unlikely to have produced anything capable of being admitted as fresh evidence under the *Zabolotnyi/Fenyvesi* principles, and so in my judgment s 30(2A) of the Senior Courts Act 1981 applies.

51. This application for judicial review is therefore dismissed. For the avoidance of doubt, the order for the Appellant's extradition made by District Judge Griffiths remains in existence.