Before the Appropriate Judge sitting at Westminster Magistrates' Court

Between:

HUNGARIAN JUDICIAL AUTHORITIES

Judicial Authority

-and-

ERNO HORVATH & MARINA HORVATH

Requested Person

JUDGMENT

Date of Full Hearing: 23 & 24 March 2021

Date Judgement delivered: 19 April 2021

PRELIMINARIES

Definitions

JA – Judicial Authority – Hungarian Judicial Authorities.

RP EH - Requested Person Erno Horvath.

RP MH – Requested Person Marina Horvath.

EAW - European Arrest Warrant, subject to the provisions of Parts 1, 4 & 5 EA 2003. For the avoidance of doubt, I appreciate that RP EH's warrants number 10 & 11 are "Arrest Warrants" subject to the overarching principles of the Trade & Co-Operation Agreement 2020 (the successor to the FD EAW in respect of warrants executed post 31/12/20) rather than EAW's – subject to the provisions of the FD EAW (see below). I use the same shorthand ("EAW") in describing each type. Given the absence of any change to the provisions of Part I EA 2003 beyond amendments to ss. 64/65 EA 2003 (which are immaterial to the issues in this case), the statutory "checklist" I have worked through is the same regardless of when the relevant warrant

was executed. Beyond the "label" to be applied to a warrant (EAW or AW), the post-Brexit Part I extradition landscape is unchanged so far as the issues arising in this case are concerned.

FI – Further Information provided by the JA.

EA 2003 – Extradition Act 2003.

FD EAW - Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. This remains applicable in this case as the EAW was issued before 31 December 2020 and RP was arrested under the EAW prior to that date. See *Polakowski [2021] EWHC Civ 53 (Admin)* at [26].

ECHR – European Convention of Human Rights.

CJEU – European Court of Justice.

EWHC – High Court of England & Wales.

Representation

JA was represented by Ms. Bostock & Ms. Burton.

RP EH was represented by Mr. Hawkes and RP MH by Mr. Hall.

Both RP's were assisted by interpreters.

THE EAW's

RP EH

1. RP EH's extradition to Hungary is sought in respect of 11 EAW's. I summarise them, and the supporting FI, in the table below (drawn from JA's skeleton argument):

No.	EAW Reference/ Relevant dates	Type	Maximum Sentence / Sentence Imposed	Offences	Relevant Co-defendants	Corresponding further information
1	43.BNY.2308/2019/2 Issued: 29 July 2019 Certified: 28 August 2019 Issued by a judge of the Central District Court of Buda. Based upon the national arrest warrant issued by the police on 22 July 2019 and adopted by the prosecution. Arrested on 10 November 2020.	Accusation	1 – 10 years	27 offences of 'grandchild fraud' between 7 December 2018 and 4 June 2019 and 18 offences of associated money laundering offences.	Csaba Nemeth Maria Lakatos Marina Horvath	9th December 2020 – relating to issues of forum 9th December 2020 – confirmation of decision to prosecute.
2	BNY.863/2019/2 Issued: 18 December 2019 Certified: 19 June 2020 Issued by a judge of the Regional Court of Buda.	Accusation	5 years	1 offence of fraud committed between 5-6 December 2019 (akin to		25 November 2020 – relating to issues of forum.
	Based upon the domestic arrest warrant issued by the police on 9 December 2019, amended and approved by the prosecutor on 11 December 2019. Arrested on 10 November 2020.			the 'grandchild frauds' except the RP pretended to be the victim's son).		

3	SZV.452/20 Issued: 25 March 2020 Certified: 19 June 2020 Issued by a judge of the Tribunal of Szolnok. Based upon the judgment of the Mezotur Local Court dated 12 April 2018, final by the Szolnok Superior Court's decision dated 3 May 2019. Arrested on 10 November 2020.	Conviction	2 years 6 months. All remains to be served.	1 offence of fraud committed on 23 June 2014, whereby the RP and his accomplice falsely claimed to sell more wood to the victim than was actually provided.		16 December 2020 – relating to fugitive status. The RP was questioned as a suspect and also as a defendant at court. He was under an obligation to notify the authorities of any change of address and was informed of this requirement.
4	13.SZV. 697/2018/18 Issued: 30 March 2020 Certified: 19 November 2020 Issued by a judge of the Punishment Enforcement Group of the Gyula Regional Court Based upon the enforceable judgment dated 5 July 2018 which became enforceable on 14 November 2018 on the basis of a decision of the Gyula Court of Appeal as a second instance court. Arrested on 2 December 2020.	Conviction	1 year 6 months imposed. All remains to be served.	1 offence of fraud committed between October 2015 and March 2016.		25 January 2021 - relating to fugitive status. The RP was questioned and was informed of the offence he had been charged with. He was under an obligation to notify the authorities of any change of address and was informed of this requirement. After the judgment, a lawyer instructed by the RP confirmed receipt.

5	13.BNY.128/2020 Issued: 7 April 2020 Certified: 19 June 2020 Issued by a judge of the Court of Bekescsaba. Based upon the arrest warrant issued by the police on 17 February 2020 and confirmed by the prosecution. Arrested on 10 November 2020.	Accusation	1-5 years	9 offences of 'grandchild fraud' committed between 13 January 2020 and 30 January 2020.		4 December 2020 – relating to issues of forum.
6	SZV.1201/2017/9 Issued: 9 April 2020 Certified: 19 June 2020 Issued by a judge of the Tribunal of Debrecen. Based on the verdict of the District Court of Debrecen dated 17 May 2016 and the verdict of the Tribunal of Debrecen dated 30 July 2017. Arrested on 10 November 2020.	Conviction	1 year 6 months	1 offence of fraud committed on 5 May 2014, whereby the RP and his accomplices purported to sell 18.5 tonnes of firewood (which the victim paid for) but had in fact only provided 4.4 tonnes.		8 January 2021 – confirms that the offence was committed with fraudulent intent. 27 January 2021 – relating to fugitive status. The RP was arrested but not questioned. He was under an obligation to notify the authorities of any change of address and was personally informed of this at a hearing on 29 July 2014.

7	36.Bny.211/2020 Issued: 14 September 2020 Certified: 17 November 2020 Issued by a judge of the Court of Szekszard. Based upon the domestic arrest warrant issued by the police and approved by the prosecution on 17 August 2020. Arrested on 2 December 2020.	Accusation	1-5 years (2 counts of fraud causing larger damage) 1-5 years (2 counts of fraud causing smaller damage) 1-5 years (2 counts of attempted fraud causing larger damage	6 offences of 'grandchild fraud' committed between 3 April 2020 and 16 April 2020.		5 January 2021 – relating to forum. 10 February 2021 – regarding the RP's role and actions in the offending.

RP MH

2. RP MH's extradition is sought in respect of a single EAW:

No.	EAW Reference/ Relevant dates	Type	Maximum Sentence / Sentence Imposed	Offences	Relevant Co-defendants	Corresponding further information
1	43.BNY.2312/2019 Issued: 30 July 2019. Certified: 28 August 2019 Issued by a judge of the Central District Court of Buda * 50. Based upon the domestic arrest warrant issued by the police on 22 July 2019 and approved by the prosecutor. Arrested 10 November 2020	Accusation	1 – 10 years	12 offences of 'grandchild fraud' between 3 January 2019 and 4 June 2019 and 1 offence of associated money Laundering.	Csaba Nemeth Maria Lakatos Erno Horvath	9 December 2020 – as to forum. 10 December 2020 – Confirmation that charges already laid against both RP MH and RP EH and proceedings pending at Budapest Metropolitan Court. 14 December 2020 – confirmation that RP MH has never been arrested or questioned about these offences as her whereabouts were not known. Accordingly she was under no obligations and cannot be considered a fugitive from the proceedings. 18 December 2020 – confirmation that children may remain with their mother in custody in Hungary until 12 months old. After the age of 12 months the RP can entrust the child to a 'person of her choice'

						and, if she does not, the competent authority shall arrange care. It is also possible that the authorities might impose electronic monitoring upon the RP which would allow for her child to remain with her. 27 November 2020 – Prison Assurance which guarantees that RP MH will receive a minimum personal space of 3m2 throughout any period of imprisonment.

ISSUES PURSUED AT THE FULL HEARING

RP EH

3. The issues pursued in resisting the extradition request on RP EH's behalf were:

- s.13(b) EA 2003 – RP EH is at risk of prejudice and punishment as a result of his Roma ethnicity;

- s.19B EA 2003 – forum (in relation to all 'grandchild fraud' EAW's (1,2,5,7,8 & 11);

- s.21/21A EA 2003:

- **Article 3** – prison conditions
- **Article 8** – right to a private and family life.

RP MH

4. The issues pursued in resisting the extradition request on RP MH's behalf were:

- **s.13(b) EA 2003** –That RP MH might be prejudiced at her trial due to her Roma ethnicity;
- **s.21A EA 2003:**

- Article 3 – Extradition is barred on the basis of inadequate prison conditions which cannot be alleviated by the assurance provided;

- Article 5 – If extradited, there would be a 'real risk' of excessive pre-trial detention to a standard which would breach the ECHR;

- Article 6 – If extradited, there would be a 'real risk' of excessively lengthy proceedings in breach of the ECHR;

- Article 8 – That extradition would be a disproportionate interference with the family rights of RP MH's daughter.

INITIAL HEARING

RP EH

5. RP was arrested and produced in custody at Westminster Magistrates Court as set out in the table below.

EAW	**Arrest Date**	**1st Appearance**
1,2,3,5,6	10 November 2020	11 November 2020
4,7,8,9	2 December 2020	2 December 2020
10,11	11 January 2021	11 January 2021

6. At each first hearing for each EAW the extradition hearing was formally opened. The appropriate judge at each first hearing was satisfied:

- s.4 EA 2003 – as to RP EH's arrest, service of the relevant EAW upon him, and his initial appearance at Westminster Magistrates Court as soon as practicable; and
- s.7 EA 2003 – that RP EH was the person in respect of whom the relevant EAW was issued;

7. RP EA was represented when the case in respect of each EAW was opened. He did not consent to the request for his return to Hungary. Standard directions were given. RP EH was refused bail and has remained in custody throughout.

RP MH

8. RP MH was arrested on 10 November 2020 and produced in custody at Westminster Magistrates Court on 11 November 2020. On that date the extradition hearing was formally opened. The appropriate judge at that hearing was satisfied:

- s.4 EA 2003 – as to RP MH's arrest, service of the EAW upon her, and her initial appearance at Westminster Magistrates Court as soon as practicable; and

- s.7 EA 2003 – that RP MH was the person in respect of whom the EAW was issued;

9. RP MH was represented when the case was opened. She did not consent to the request for her return to Hungary. Standard directions were given. RP EH was refused bail but it was subsequently granted (with conditions) at a hearing at the High Court on 16 December 2020.

THE FULL HEARING

Preliminaries

10. By s.206 EA 2003, other than where that Act otherwise directs, the burden and standard of proof required in answer to any question I am required to address under EA 2003 is that applicable as if the matter before me was the trial of an offence. Accordingly, save where otherwise indicated, I make any necessary findings to the criminal standard, with the burden of proving the issue (unless otherwise indicated) resting on JA.

Evidence

11. I heard from RP MH, a Dr. Csire and I was taken to a number of "open source" materials. RP EH declined to give evidence and be cross examined.

Dr. Csire

12. Dr. Csire is an attorney-at-law, residing and practicing at the Bar in Budapest. He graduated in 2001, then worked as an apprentice for 2 years in a law firm before being called to the bar in 2008. He is a member of the Disciplinary Committee (appeals) of the Hungarian Bar Association. Apart from his daily criminal defense work, he is an advisor to the Hungarian Helsinki Committee a non-governmental organisation interested in fair criminal procedures and prison conditions.

13. Dr. Csire was instructed in behalf of both RP's to give evidence on two issues:

a) The likelihood of the RP's being prejudiced at trial or punished on account of their Roma ethnicity;
b) Whether the conditions of detention in which the RP's would be held in Hungary may fall below the minimum standards pursuant to Article 3 of the European Convention on Human Rights.

14. Summarising his report on these two issues:

Roma Ethnicity

15. As members of Roma minority, they especially may expect less-than-favourable handling by authorities, or an especially unsympathetic approach. In his opinion, opinion, their ethnicity will be a disadvantage , if convicted, for the offences they are charged of are regarded as “Roma crimes".

16. Unequal treatment of Roma officially does not exist, and most likely there would be no trace at all that the defendants were managed or handled differently from those not being Roma.

17. Roma people are treated with much less respect and are treated with much more suspicion and their "not guilty" pleas and pertaining statements are less accepted than made by someone of the white population.

18. There is a distrust or even hidden hate, racial bias against Roma among police officers, prosecutors and even judges, in this they are not different from the general public…..[but] other non-whites (eg Arabs, Blacks) would face the same problem.

19. Roma defendants are regularly treated with less respect and more distrust. Generally speaking, a kind of disgust is sensible among policemen, even prosecutors and judges if the defendant is Roma. It renders their position less favourable compared to defendants otherwise treated fairly. It is especially apparent if and until the Roma defendant does not have a defence counsel.

20. Roma are over-represented in the prison population (at 40-42%) compared to their share in the general population (at 8-9%).

21. Dr. Csire concludes that, because of their Roma ethnicity, it is possible that both RP’s would be punished more severely than if they were not Roma if they are convicted, especially if an Eastern-Hungary court tries their case. Their treatment throughout the criminal justice system will be highly likely to be more severe because of their ethnicity. He has little doubt that they will face (at least partial) prejudice at trial because of their ethnicity and the nature of the offences with which they have been charged.

22. Cross examination on this topic was initially problematic. Ms. Burton wanted to take Dr. Csire to a report he had filed in the case of two of these RP’s co-defendants in the substantive proceedings, and in respect of whom I had conducted an extradition hearing two weeks before. In order to rule on whether that was permissible, I was of the view that the earlier report must

be shared with Mr. Hawkes and Mr. Hall. Otherwise, I would have regard to material they had not seen. I ruled that cross examination of Dr. Csire by reference to that earlier report was not to be permitted. Mr. Hawkes and Mr Hall then sought an adjournment so that they could consider whether to ask Dr. Csire to "expand" on the two issues they had asked him to consider. I refused that – the issues taken in that other case could not be "imported" into the proceedings now before me.

23. Dr. Csire's views on Roma prejudice were that although there is no systematic and very strong bias against Roma, bias can be felt in the way a judge or a prosecutor will be less lenient than they would be towards white men or women. He would not say that Roma receive significantly longer prison time – but where a court could be lenient a Roma would be less likely to benefit from that. He could not state that there was a systemically longer term, but there may be cases where Roma ethnicity may be a factor. Asked if he had personal experience of Roma experiencing greater sentences than non-white – he said there were cases where Roma clients received a bit more than he would have achieved with a white person – but it was a feeling only and not supported by evidence.

24. He said there is no hard evidence one way or the other that there is Roma discrimination – but to find it in a case may be hard. A Roma person will claim discrimination even where the defence lawyer does not. It is a difficult question to which to give a straight answer. He clarified that it is possible but not always the case that a Roma will receive a longer sentence.

Prison Conditions

25. General prison conditions in Hungary have improved over the years. General occupancy is around 98% compared to the previous percentage being as high as 140% as a result of a prison building programme.

26. Thousands of convicts sued the Hungarian State before ECHR and domestic courts with success: billions of forints had to be paid for convicts as compensation for poor conditions, especially for lack of personal space rooting in overcrowding.

27. His experiences and feedback from colleagues show that in Szombathely (and also in Tiszalok) where extradited people are often admitted are "up-to-standard prisons, where inhumane conditions are not known to feature."

28. He has significant concerns about the conditions in transit for the requested persons, however. They each face numerous procedures which would be conducted in parallel. It is

therefore very likely that they would be subject to continuous transits and transfers between prisons. This is significant because during transit and transfer conditions are much worse than in a well regulated (ie up-to-standard) prison. In his opinion the conditions of detention the requested persons will face while in transit could easily be seen to be inhuman or degrading, given the cramped space, lack of toilet facilities, adequate food, water and lengthy duration of such detention.

Delay

29. Although not within his Report, Dr. Csire was asked to comment on delay in the Hungarian judicial process. He said the general upper limit for pre-trial detention (being the total period before verdict) is 3 years but can be 4 years. Less than 10% of detainees are kept under arrest for more than 1 year with only a very limited number being held for up to 3 years. The average period is one year – with very few remaining in arrest after 1 year. Time spent in detention in the UK pending extradition will count in determining the "upper limit".

30. Covid has had an impact - Dr Csire noted that there were no trials currently taking place but he suggested things would be back to normal by September – "everything will be delayed by 6 months compared to pre-pandemic."

31. Applications to be released from custody can be made on the application of the RP. The court will check for an application every 3 months. Every 6 months the court must review the position and can release on coercive measures (akin to bail conditions). Asked what the percentage chance is that RP MH will be released on bail – he said he was 99% sure that she will be arrested and held in custody but for how long he could not say. As a very rough guess he thought her chances of bail were low in the initial six months, but better if she is detained for up to a year.

32. He agreed that as charges are already before ethe court in respect of RP MH then the trial process was more advanced than if no charges were already filed.

Marina Horvath

33. RP MH adopted her proof of evidence and its addendum.

34. She was never arrested or questioned by the police for the alleged offences in Hungary and was living in the UK when the alleged offences occurred. She denies the allegation and has

never being involved in any fraud. She has no convictions in Hungary or anywhere else. RP EH is her on and off partner and the father of her two year old daughter Eysan Horvath.

35. She is 32 years of age. She finished school at the age of 14 and at 18 married her first husband. Due to the domestic abuse she left her husband and two children - a son who was 7 years old and a daughter who was 5 years old at the time. She moved in with my parents. She went to court but full custody of my children was granted to her husband. Since then she has not seen or been in touch with those children.

36. She came to the UK at around end of summer 2016 for a better life and joined her new partner who was already living here. That relationship broke down 6-7 months later.

19. Upon arrival in the UK she obtained a National Insurance number and started working in a cheese factory. Afterwards she worked as a cash in hand cleaner and was going back to Hungary regularly .

20. At around the beginning of 2017 she met Erno Horvath via "messenger". My mother was ill so RP MH stayed in Hungary for 3-4 months to look after her. Whilst in Hungary, she met RP EH in person. He came to the UK and she joined him a few weeks after and became pregnant 4-5 months into the relationship.

22. Their daughter, Eysan Horvath was born on 3 December 2018. 23. Her relationship with RP EH is good but an on-and-off one. RP EH is a good father to Eysan and always looked after RP MH and Eysan financially. He was always very supportive.

37. In Hungary, there is a huge discrimination/prejudice against Roma. It is hard to get a job if you are a Roma. Her daughter would not be able to get into good schools because of her ethnicity. As a child RP MH said that at school no one spoke to her because she was Roma. No one would come near her or play with her. She felt isolated and was called names like "you stinky Roma" when walking on the street. She does not want her daughter to experience what she went through.

38. On 21 January 2021 she was released on conditional bail and now lives in Bolton with friends. She is not in receipt of any benefits and is financially supported friends and by her father, who sends money from Hungary.

6. On 18 February 2021, Eysan was returned permanently to her care. Eysan originally found it difficult to settle and she would not fall asleep on her own. She would cry at bedtime and her

personality had changed, although RP MH found it difficult to describe precisely how. Eysan is now much more settled and she goes to sleep without crying. RP MH goes to sleep with Eysan together at the same time. They sleep in the same bed – Eysan "just wants to be with me all the time."

9. RP MH hopes to remain in the United Kingdom with her daughter as there are better prospects for jobs and schooling. There is no discrimination in the work place and at schools against Roma. In the event that her extradition is ordered, she hopes that her father will be able to come to collect Eysan and take her to Hungary. She fears very much that if she is extradited, Eysan will end up in the care system in the UK and that it will be difficult to have her returned to Hungary. In addition she fears that Eysan will be mentally affected by RP MH's extradition and would not be able to cope.

11. She is not sure what the future holds for her relationship with RP EH. She was separated from their child for three months for things which she says she was not involved in. The pain of separation from her daughter was indescribable. Her daughter comes first. If RP EH's extradition is ordered she would remain in the UK with Eysan.

39. In cross examination by Ms. Bostock, she confirmed that following her remand in custody, the care plan was that the daughter would have gone to her father Rudolf Lakatos and her mother in law Mrs Horvath in Hungary and that if extradited, that remains the plan for her daughter.

40. She said she did not know RP EH was wanted to serve prison sentences in Hungary. It was put that they have moved around the UK a lot – as if trying to hide from the Hungarian authorities. She said that was not so – they were looking for work opportunities, hence the moves. She said that given that RP EH's language was limited he found limited work in car washes and the like. She couldn't work as she was looking at her young daughter at home.

41. Her sister is Ms Lakatos, and her brother in law is Csba Nemeth. When she was arrested, Ms Lakatos' son Antonio was with her. She was asked if she knew social services were looking for Antonio and she said not at that point, no. Asked if she knew Csba Nemeth was wanted in Hungary for these offences, she said she wasn't in touch with them – only their 14 year old son. It was suggested that she knew Nemeth was wanted, that he and Lakatos were in trouble and she was trying to distance herself from them. She denied that.

Open Source Materials

42. I summaries these materials as per Mr Hawkes skeleton argument.

Minority Rights Group report, January 2018

43. In January 2018, the Minority Rights Group (MRG) published an updated assessment of the extent of anti-Roma discrimination in Hungary. The organisation reported deep-seated socioeconomic, cultural, political and judicial discrimination against ethnic Roma. The consequences of the same were: living conditions for Roma are significantly worse than for the general population and ethnic Roma suffer profound social and economic marginalization, limited access to services and lower life expectancy as compared to non-Roma Hungarians.

44. Roma children are stigmatised and excluded. Roma people have significantly lower life expectancy than non-Roma and higher levels of poverty. Educational levels are far below non Roma; the MRG reported a study which showed 80% of Roma in Hungary did not complete more than 8 years of schooling; 16% did not complete primary school; 64% did not complete secondary; while just 1% of Roma went on to complete higher education.

45. Almost one-third of Roma live in homes without tap water and 43% have no access to indoor toilets, showers or bathrooms.

46. Roma are the targets of racist violence and hate speech; 60% of recorded hate speech incidents in Hungary were against Roma, whether from members of the public or the increasingly visible extremist, xenophobic groups. In the light of the distrust of the police and judiciary, this reported figure is likely an underestimate.

47. Roma also face 'continued hostility' from the police and officials, which results in 'persistent discriminatory practices including ethnic profiling and fines for even the most minor infractions.'

48. There is a significant gender gap in respect of domestic violence, which the MRG attributes both to existing patriarchal values in the Roma community, but also Roma women's mistrust of the police and the judiciary.

United States State Department Country Practices Report 2019 (published March 2020)

49. The US State Department report confirms the systemic and structural discrimination against Roma. Roma children are segregated from non-Roma children and are frequently misdiagnosed as mentally disabled; the number of Roma children placed in schools for children with mild

disabilities ‘remained disproportionately high’. Human rights NGOs continued to report that Roma suffered social and economic exclusion and discrimination in almost all fields of life, repeating its finding from 2018. In January 2019, national media broadcast recordings of Tamas Sneider, the leader of the opposition party Jobbik, making racist comments and promising to defend the country against Roma.

The UN Committee on the Elimination of Racial Discrimination: concluding observations 6 June 2019

50. The United Nations Committee on the Elimination of Racial Discrimination Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary, published on 6 June 2019 contains comments on the question of anti-Roma discrimination.

51. The Committee expressed its deep alarm at the prevalence of racist hate speech direct towards, inter alia ethnic Roma which it found ‘fuels hatred and intolerance and at times incites violence towards such groups’. The Committee found ‘leading politicians’ and the media, public officials in the State party at the highest levels have promoted racial hatred.

52. The Committee recorded its concern about the persistence of violent racist hate crimes against ethnic Roma and reports that the provision in law to prevent hate crimes are not used to protect ethnic Roma, but rather, the ethnic majority in the country. Of particular note, harsher punishments are given to ethnic minorities who are convicted of hate crimes themselves.

53. The Committee called upon the Hungarian government to ensure that penalties are imposed ‘on the basis of objective criteria and not on the basis of the ethnicity of the perpetrator or victim.’

54. The Committee highlighted the pervasive societal discrimination against Roma, including at school, where segregation is still practiced and is increasing, the ‘persistent structural discrimination’ against Roma, the extreme poverty Roma experience, living in segregated neighbourhoods, high unemployment and extreme income gap based upon ethnicity.

55. The Committee also noted the targeting of Roma for hate crime and how law enforcement do not provide adequate protection of Roma communities; Roma are also subject to ethnic profiling by the police.

The UN Human Rights Committee: Human Rights Committee Concluding observations on the sixth periodic report of Hungary, 9 May 2018.

56. These concerns echo those contained in the UN report of 2018, in which the same issues of discrimination, racial profiling by the police and hate speech against Roma, including from the government were recorded. The Committee noted that the 'Roma community continues to suffer from widespread discrimination and exclusion, unemployment and housing and educational segregation'.

57. The Hungarian Helsinki Committee (HHC), in its submission to the UN Committee on the Elimination of All Forms of Racial Discrimination of 2018 confirmed the observations cited ante. In addition, and in particular, the HHC provided the outcome of its 2013 study of the experiences of approximately 400 Roma inmates in the criminal justice system. Their findings were:

a. Official papers would cite the Roma ethnicity of the defendant where it had no relevance or bearing on the case; references to their ethnicity would be inserted into police statements at a preliminary stage

b. One in three Roma 'sensed bias from the authorities' while a fifth experienced discrimination

c. Roma would be detained for significantly longer in solitary confinement than non Roma detainees

d. Roma defendants would be far more likely to be given a defence lawyer less than an hour before a hearing, in contrast to non-Roma defendants, who would be given longer

e. Roma defendants would spend longer in pre-trial detention than non-Roma defendants

f. Roma defendants are more likely to be the subject of non-individualised decisions on their remand status; that is, the decision on their remand would be less likely to take into account their personal circumstances.

Consideration of the Issues

58. Dealing with each issue and considering each stage prescribed by the EA 2003 in turn:

s.2(6) EA 2003

59. Neither RP makes any challenge to the warrant particulars and certificates, and I find that they are, in respect of all of the warrants, correct.

s.10(2) EA 2003

60. It is not suggested that the conduct alleged against each RP does not constitute an extradition offence as defined in s.64 EA 2003 ("accusation" warrants) or s.65 EA 2003 (RP EH's "conviction" warrants), and I am satisfied that they are.

s.11 EA 2003 - Bars to extradition

61. Both RP's advance arguments under s.11(1)(b) EA 2003 - "extraneous considerations" – as defined in **s.13B EA 2003:**

> *"A person's extradition to a category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that -*
>
> *(a)……..*
>
> *(b) if extradited she might be prejudiced at his trial or punished, detained or restricted in her personal liberty by reason of her race, religion, nationality, gender, sexual orientation or political opinions."*

62. As Mr. Hall puts it in his skeleton argument, the following principles flow from *Antonov and another v Lithuania* [2015] EWHC 1243 (Admin) (Aikens LJ and Simon J) at [27]-[30]:

> i. The Court is undertaking a prognostic exercise (at [27]);
>
> ii. The requested person must show that there is a 'reasonable chance', 'serious possibility', or 'substantial grounds for thinking' that he will be subjected to prejudice at trial or punished, detained or restricted in his liberty, due (in the Applicant's case) to his race and/or nationality (at [27]).
>
> iii. The requested person does not need to show that the events described in s.13(b) will take place 'on the balance of probabilities' (see Hilali v Spain [2006] EWHC 1239 at [62] (Scott Baker LJ and Openshaw J), endorsed in Antonov at [27]).
>
> iv. The requested person must show that there is a reasonable chance of being prejudiced at trial or punished, detained or restricted in his liberty and a reasonable

chance that such prejudice, punishment etc., is as a result of his race and/or nationality (at [27]).

v. A request person may rely on any evidence in support of his challenge; a court is not bound by the usual rules of evidence (at [30]).

63. On RP MH's behalf, he relies on:

63.1 Dr Csire concludes that as members of a Roma minority, the requested persons will receive "less-than-favourable handling" and that they will be "disadvantaged" due to their ethnicity if convicted: [1]. There is a "distrust or even hidden hate, racial bias against Roma among police officers, prosecutors and even judges", and xenophobia is on the rise: [2]. It is difficult to prove discrimination as no statistics on ethnicity are kept. Dr Csire's experience is that Roma are treated with "less respect and more distrust … a kind of disgust" by police, prosecutors and judges: [3]. Statistics show that Roma are grossly overrepresented in the prison population, amounting to 40-42% while being only 8-9% of the general population: [4]. The Hungarian government has refused to follow rulings of the courts regarding compensation for discrimination faced by Roma: [6]. Dr Csire concludes that:

> *"7. In my view, because of their Roma ethnicity, it is possible that both Erno and Marina Horvath would be punished more severely than if they were not Roma if they are convicted, especially if an Eastern-Hungary court tries their case. Their treatment throughout the criminal justice system will be highly likely to be more severe because of their ethnicity. I have little doubt that they will face (at least partial) prejudice at trial because of their ethnicity and the nature of the offences with which they have been charged."*

63.2 The Report of the Committee on the Elimination of Racial Discrimination, 6 June 2019 whiche noted that the persistence of racist hate crimes against Roma: 14(a). The Committee was "deeply alarmed by the prevalence of racist hate speech" against Roma, including "at the highest levels" of government, and the lack of investigations / prosecutions: 16. The Committee noted that despite Hungary's National Social Inclusion Strategy of 2011, it remained "highly concerned at the persistence of discrimination against Roma and the segregation and extreme poverty that they face" and noted in particular the lack of statistics to be able to address discrimination in the criminal justice system: 20. The Committee expressed concern at the lack of "training

programmes conducted for judges, prosecutors, lawyers and State and public officials on the prevention of racial discrimination": 26.

63.3 The US State Department Report, 2019 which noted that Romani women especially face discrimination in seeking access to justice: p. 26.

64. I don't repeat the evidence relied upon by Mr Hawkes on this ground, being:

- Report of the Minority Rights Group, January 2018
- The expert report of Dr. Csire
- United States State Department, Country Practices Report, Hungary 2019
- UN Special Rapporteur report
- UN CERD 2019 conclusion g. UN HRC ICCPR periodic report
- Hungarian Helsinki Committee report
- Committee for the Prevention of Torture Reports, 2006 and 2018

65. He submits that there is a substantive and authoritative body of evidence which points towards deep concern about the systemic discrimination against ethnic Roma in Hungary. This ranges from schools, where Roma children are segregated or disturbingly placed in special schools for those with mental health issues, where they in fact have none, to housing, poverty, employment and discriminatory treatment in the criminal justice system. The stark reality is the level of imprisonment of ethnic Roma, as a proportion of the population, cannot be explained by the pockets of predominantly ethnic Roma in parts of the country. Rather, the picture, which is, he submits, clear and consistent, is that from very senior politicians, to low-level police officers, treat ethnic Roma with disdain, bias and prejudice.

36. He therefore submitted that it appears that RP EH may be prejudiced, whether at trial or in the sentence he may receive if convicted on account of his ethnicity. He submitted that there could be no confidence that, in respect of the matters of which the RP has been convicted, he was not subject to the prejudice detailed above, and that the sentences he received were not lengthier than they would otherwise have been, had he not been ethnically Roma.

66. On JA's behalf, it was submitted that, per *Anatov:*

"This court has to start with the presumption that the Lithuanian courts and judiciary will, as institutions in an EU and Council of Europe state, uphold their ECHR obligations, unless there is cogent evidence to demonstrate that is not so. In the case of Lithuania the highest that VA and RB's case can be put is that the judiciary may not

always be utterly independent and that there may remain an element of being more favourable to the prosecution as in the old soviet-bloc days. However, there is nothing to show that the judiciary are, in general, biased against Russian nationals or those who are associated with them or that the judges who would be involved in the trial of VA and RB would be biased against them or there would be some other kind of prejudice at their trial on account of their nationality."

67. Of Dr. Csire, it was submitted that his opinions were very much that – his opinion based on his personal perceptions. He referred to the report of the Hungarian Helsinki Committee. That report does not assert any positive evidence of discrimination during trial either and, in fact, provides evidence to the contrary (e.g., page 25 where a defence lawyer representing Roma for 19 years advises he can recall no occasions of biased decisions). The second report that Dr Csire refers to by the HCC 'Last Amongst Equals' also provides evidence that there is no discrimination to the extent of affecting the fairness of trial.

68. In respect of the Minority Rights Group report (January 2018), the only paragraph relating to the justice system indicates that Hungarian Courts actively protect Roma against discrimination.

69. The United States Department Report 2019 also discusses concerns about discrimination against Roma in other areas of life such as education, but the section in respect of 'fair trials' at pages 5-7 finds no such issue. Even in relation to the issue about education, the report at page 27 §4&5 details two cases where the rights of Romani children were specifically protected by the Hungarian Courts.

70. Both UN reports again detail concerns of general racism and discrimination within society but do not state anywhere that this bleeds into the judicial system and creates an active prejudice against Roma during the trial process. The 6 June 2019 report notes (§8) 'the establishment of the Commissioner for Fundamental Rights in 2011, and the attribution of A status to the institution by the Global Alliance of National Human Rights Institutions' and (§10) 'the adoption of the Fundamental Law of Hungary, the Equal Treatment Act and specific provisions of the Labour Code that promote equal treatment'. Under the section relating to Roma (page 5) no mention is made about discrimination faced during the trial process.

71. This issue has been considered by the EWHC on a number of occasions – the most recent being by Burnett, J (as he then was) in *Nikolics v Hungary* [2013] EWHC 2377 (Admin).

72. Giving consideration to the meaning of "might" in s.13(b) EA 2003, Burnett J cited the House of Lords in *Fernandez v. Government of Singapore and others* [1971] 1 WLR 987:

> *"A reasonable chance," "substantial grounds for thinking," " a serious possibility" – I see no significant difference between these various ways of describing the degree of likelihood….."*

73. He went on:

> *"15. In considering whether the evidence establishes the section 13(b) test there is an important background feature in cases involving category 1 territories, because they are members of the European Union and state parties to the Convention. There is an assumption that such states will vindicate the convention rights of those returned to them…….Therefore, there is an assumption that the Hungarian judiciary will try the appellant fairly, not discriminate against him on grounds of his Roma race and not impose different custodial requirements, either on remand or following conviction, as a result. However that assumption is capable of being displaced by cogent evidence."*

74. As is the case before me, the Appropriate Judge dealing with that case at first instance had evidence before him from an Attorney which suggested a statistical over representation of the Roma community in Hungarian prisons and their harsh treatment in the Hungarian criminal justice system. He also had before him, as do I, a number of human rights reports which dealt in general terms with the plight of Roma people within Hungarian society, rather than their treatment within the criminal justice system.

75. Burnett J concluded:

> *"Hungary became a state party to the Convention in 1992. No decision of the Strasbourg court relating to the position of Roma in the Hungarian justice system was referred to in the course of argument. Counsel's researches did not discover a successful application to the Strasburg court founded upon a suggestion that Roma are discriminated by the judiciary. That contrasts, for example, with well known cases dealing with discrimination against Roma in Hungary in the context of education. The absence of such cases to my mind provides further support for the conclusion that there are no substantial grounds for thinking that the appellant might suffer discrimination of the sort he fears."*

76. Can I conclude that there is “a reasonable chance,” “substantial grounds for thinking,” “ a serious possibility” that both RP’s will be prejudiced at their trial or punished, detained or restricted in their personal liberty by reason of their race? Dealing very briefly with the open source material first. It is easy to selectively quote from such materials – indeed it is necessary to do so or risk a lengthy judgment being even longer. Dealing with the materials in turn:

77. Read fairly, the Minority rights Report this demonstrates the fluctuating attempts of the post war Hungary to address the issues of discrimination against the Roma people in that country. It cites the period of the 1970’s and 1980’s when the communist authorities in Hungary embarked upon a policy of supporting Roma activities and culture which was quite exceptional at the time in Central and Eastern Europe. It refers to the importance of addressing the situation of the Roma during the accession process leading to Hungary’s membership in the EU in 2004. Hungary was required to ‘improve the integration of the Roma minority […] through more efficient implementation and impact assessment of the medium-term Roma action programme, with particular emphasis on promoting access to mainstream education, fighting discrimination in society (including within the police services), fostering employment, and improving the housing situation’.

78. From 2005 to 2015, an international program was launched aiming to improve the economic status and social integration of the Roma population by developing appropriate policies to achieve these objectives and by monitoring performance. A working group was set up at prime ministerial level under the leadership of the Hungarian Prime Minister with the aim of coordinating Roma integration activities and combating discrimination during the decade. Another important integration policy was also adopted in 2011 – the Framework Agreement between the Government and the National Roma Self-Government – in order to promote the social inclusion of the Roma population, with an emphasis on job creation and education.

79. A change in the fortunes of political parties since 2010 has seen increased levels of xenophobia in Hungary. Instances of unfair practices by the police towards Roma have resulted in the Hungarian courts ruling that the police have directly discriminated against Roma people.

80. Of itself, whilst I have concerns at the day to day treatment of Roma people by Hungarian society, that Report does not cause me to conclude that the judiciary will fail to protect the rights of a Roma defendant – nor that an enhanced sentence would be imposed by reason of a defendant being of Roma origin. Nor does it cause me to conclude that the police have targeted both RP’s because they are Roma. That Report refers to minor matters resulting in

disproportionate police action against Roma. The crimes alleged against both RP's are far from minor. Even Dr. Csire is compelled to describe them as "nasty" offences. They are not examples of police officers being over-zealous because of the ethnicity of the RP's.

81. There is nothing in the UN Report of 9 May 2018 that suggests that the judiciary will fail to protect each RP's right to a fair trial.

82. The 2019 Human Rights Report notes that:

- The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of his or her arrest or detention in court. The government generally observed these requirements.
- There is a functioning bail system.
- Cases involving pretrial detention take priority over other expedited hearings. A detainee may appeal pretrial detention.
- The constitution and law provide for an independent judiciary. Courts generally functioned independently.
- The constitution and law provide for the right to a fair public trial, and the judiciary generally enforced this right.
- Trials generally occurred without undue delay.
- Defendants have the right of appeal.
- There were no reports of political prisoners or detainees.

83. Whilst noting fines imposed by courts for discrimination against Roma people, nothing in the Report suggests that Roma people will be subjected to an unfair process in the course of a criminal trial.

84. The submission by the Hungarian Helsinki Committee of April/May 2019 notes the existence of an Equal Treatments Act but expresses concerns at the unequal treatment of Roma people in Hungary. It comments that "*more severe punishment is applied in the cases of offenders belonging to minority groups"* – but then qualifies that by noting that only one case where the defendant was sentenced to imprisonment instead of parole or a fee was a case where Roma defendants used violence against members of an extremist group. That is not sufficient, without more, in my view, to conclude that there is a reasonable chance/substantial grounds for thinking/ a serious possibility that Roma defendants will receive a disproportionately more severe sentence than a non-Roma defendant.

85. In the section of that Report headed "Discrimination in the Criminal Justice System" there is a discussion as to the periods of detention in the pre-trial and trial phase, but nothing that suggests that a Roma defendant will be more likely to be convicted than a non-Roma defendant.

86. As to Dr. Csire – he made the point himself that he is of the personal opinion that a Roma defendant will suffer bias on the basis that societal bias will inevitably bleed across into the judiciary. That said, he expressed the view that he himself is not biased. In other words, he suspects unconscious bias in others but not in himself. He could not point to any specific instances of Roma defendants receiving substantially lengthier sentences than non-Roma defendants, and preferred to view the problem as one of Roma defendants not benefitting from the leniency a judge might afford to a non-Roma defendant – a subtler form of discrimination.

87. As to my conclusions on s.13(b) EA 2003 – I see a worrying picture of Hungary as a society in which prejudice against Roma people is being fermented by politicians. I see evidence of a lack of educational and life opportunities for them – and some evidence of a failure on the part of the police to protect them from physical and verbal abuse. But I see that the courts have stepped in to protect Roma rights. I find it difficult to conclude that the courts which are willing to hold the police and others to account where Roma Rights have been trampled would fail to ensure that Roma people receive a fair trial. Underpinning EU law is that presumption of compliance by an EU state. The combination of materials relied upon on both RP's behalf does not establish that either RP might be prejudiced at their trial or punished, detained or restricted in their personal liberty by reason of their Roma ethnicity.

88. Whether RP EH might have received a punishment in respect of his conviction warrants that was unfair as a result of his Roma ethnicity has nothing to do with s.13(b) EA 2003 – which is a "forward looking" provision. The suggestion that he might have done is in any event speculation.

s.19B EA 2003 – Forum – RP EH

89. s.19B EA 2003 provides:

> *"(1) The extradition of a person ("D") to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.*
>
> *(2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—*

(a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and

(b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.

(3) These are the specified matters relating to the interests of justice—

(a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;

(b) the interests of any victims of the extradition offence;

(c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;

(d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;

(e) any delay that might result from proceeding in one jurisdiction rather than another;

(f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—

(i) the jurisdictions in which witnesses, co—defendants and other suspects are located, and

(ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;

(g) D's connections with the United Kingdom.

(4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 1 territory concerned.

(5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a

part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum."

90. It is readily apparent that the "pre-condition" at s.19B(2)(a) is met in respect of all of the accusation EAW's and no more need be said but that I must go on to decide whether extradition would not be in the interests of justice – having regard only to the specified matters.

91. In *Love v USA [2018] EWHC 172 (Admin)*, a divisional court presided over by Burnett, LCJ, noted (in respect of the identical Part II EA 2003 provisions to those at s.19B in Part I) –

"…Its underlying aim is to prevent extradition where the offences can be fairly and effectively tried here, and it is not in the interests of justice that the requested person should be extradited……. The forum bar only arises if extradition would not be in the interests of justice; section 83A(1). The matters relevant to an evaluation of "the interests of justice" for these purposes are found in section 83A(2)(b). They do not leave to the court the task of some vague or broader evaluation of what is just. Nor is the bar a general provision requiring the court to form a view directly on which is the more suitable forum, let alone having regard to sentencing policy or the potential for prisoner transfer, save to the extent that one of the listed factors might in any particular case require consideration of it."

92. Further considering the relevant provisions in *Scott V Gov. USA A[2018] EWHC 2021 (Admin)*, Burnett LCJ considered the following as the pertinent matter s to which an appropriate judge will have regard in respect of each of the "checklist" features of s.19B –

"(a) The place where most of the loss or harm took place will usually be "a very weighty factor".

(b) The interests of any victims of the extradition offence – "Convenience of witnesses is one element to be considered in determining where the interests of any victims lie. However, that is only a relevant element when the question is whether the trial should take place in the requesting state or in this country. When, as is this case, "the practical reality is that no investigation or prosecution is likely in this jurisdiction", the relative convenience for witnesses can be of no more than hypothetical interest. It carries no real weight." ……If the choice is between a trial in one jurisdiction and no trial in the

other jurisdiction, the interests of victims are likely to favour trial in the jurisdiction where a trial will take place.

(c) Any belief of a prosecutor that the United Kingdom … is not the most appropriate jurisdiction – [where] that there is no relevant statement of belief that the United Kingdom is not the most appropriate jurisdiction for a prosecution… that is the end of the matter for these purposes.[47]

(d) … whether evidence … is or could be made available in the United Kingdom - When the practical reality is that there will be no trial in this country it is hard to see that this factor has any part to play in determining where the interests of justice lie pursuant to section 83A. Any comparison could only be hypothetical.[50]

(e) delay - The paragraph requires a comparison between a trial in this country and in the requesting state, in circumstances where in fact there will be no trial here.[52]…..The judge found that a prosecution here would inevitably involve a substantial delay as no investigation has even begun, while in the United States the case was ready for trial. However, when there is unlikely to be any such investigation here, let alone a prosecution, that is an artificial comparison. In this case, this point adds nothing of substance to the conclusion that the interests of victims point on balance towards a trial; and if there is to be a trial it will be in New York.

(f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction - In a case where there is more than one defendant, it is desirable when practicable for prosecution to take place in a single trial. …… However, the position is less weighty when, even if the prosecutions take place in the same jurisdiction, separate trials are inevitable. [55]

(g) D's connections with the United Kingdom - The judge correctly stated that the appellant "is a UK national with very strong connections to the UK". There was little discussion of the appellant's circumstances. The conclusion, while true, understates the position….This was, therefore, an important factor against extradition. [57][58]

93. In *USA v McDaid [2020] EWHC 1527 (Admin)*, a divisional court (Holroyde, LJ, William Davis, J) commented on s.83A(3)(g) and its treatment by the court in *Love* –

"the concept of connections with the UK went beyond the fact of citizenship or right of residence. Without attempting an exhaustive definition of "connection", the court said at [40] that

"It would cover family ties, their nature and strength, employment and studies, property, duration and status of residence, and nationality. It would not usually cover health conditions or medical treatment, unless there was something particular about the nature of the medical condition or the treatment it required, that connected the individual to treatment in the United Kingdom."

94. The court went on –

"section 83A does not require a court to decide in a general way, as between the UK and the state requesting extradition, which of the two is the more suitable, or preferable, forum. Assuming that a substantial measure of the requested person's relevant activity was performed in the UK (as was undoubtedly the case here), it requires an evaluation of the specified matters in order to decide whether extradition would not be in the interests of justice and should not take place. That evaluation is necessarily fact-specific, because the importance of each of the matters specified in subsection (3), and the weight to be given to each of them, will vary according to the circumstances of the case." [43]

95. And –

"the phrase "balancing exercise" does not accurately or sufficiently describe the necessary evaluative process……Where the forum bar is raised in opposition to an extradition request, the court will generally work through each of the specified matters in turn, as the judge did here. In our view, her use of the phrase "balancing exercise" was an imprecise reference to that process [44]

Forum – my evaluation of the specified matters

96. *"(a) The place where most of the loss or harm took place* – A "very weighty factor", this resolves in favour of Hungary, where all of the harm occurred.

97. *(b) The interests of any victims of the extradition offence* – Mr Hawkes argues that although the victims of the offending were all based in Hungary and that their interests would undoubtedly be served by a prosecution, there is no material difference between a prosecution

in either Hungary or the UK insofar as a UK prosecution would not impinge on their status as complainants in the case.

98. I disagree - all of the complainants, a total of 220 of them, are elderly Hungarians. All live in Hungary. The criminal proceedings are advanced to the point where the trial process can commence. There is no hint from the UK prosecuting authority that it has any intention of conducting a prosecution in the UK. It appears that the choice is between a trial in Hungary and no trial in the UK. It is in the interests of the complainants that a trial take place rather than none at all – which favours trial in Hungary. If I am wrong, then given that no investigative process has commenced in the UK at all suggests that there would be inevitable delay in UK proceedings progressing to a trial – adding further to the burden on the victims who are, as already observed, elderly. It is clearly not appropriate that a raft of victims be transported to the UK to give their evidence here. Whilst live links could be used, there is an impracticable large number of them for that method to be regarded as an efficient one. There is the burden of multiple translators to be considered – which would not arise at all if the trial were in Hungary. Ditto the issue of the translation of all relevant materials into English in order to be understood by an English prosecutor. There is no common sense rational for considering that it would be in the interests of the "victims" (there has been no conviction yet – but that word is the terminology of the statute) for the trial to take place in the UK.

99. *(c) Any belief of a prosecutor that the United Kingdom … is not the most appropriate jurisdiction* – no such belief has been expresses and that is the end of the matter for these purposes.

100. *(d) … whether evidence … is or could be made available in the United Kingdom* - Mr Hawkes submits that there is no reason to doubt the evidence upon which the Hungarian prosecution would rely would or could not be made available to the UK.

101. JA has not ruled out providing evidence that might be deployed in the courts in this jurisdiction. However, it points to the time and expense which would be involved in translating documents. Witnesses would have to give evidence via live links and through the medium of interpreters. Interpreters would be required for each co-defendant. That would elongate each trial significantly. There are numerous co-accused. How the evidence could be deployed against them when they are in Hungary is a difficulty that makes the suggestion that the criminal conspiracy could be tried in the UK a fanciful one.

102. *(e) delay* – Mr. Hawkes points to chronic delays in the Hungarian trial system. He suggested that the evidence is clear that a trial in Hungary may take many years before it would commence. Such delay would not only potentially breach Article 5(3) of the Convention, but Article 6(1) also. A UK-based prosecution would remove those risks entirely.

103. I disagree, not least because it was not Dr. Csire's evidence that there would be unconscionable delay in the trial process in Hungary. If there was to be a trial in the UK, a completely speculative presumption, then the translation of the vast tracts of documentation alone would inevitably cause delay. The prospects of a relatively swift trial in the UK are next to non-existent given the pressures on the Crown Courts of England & Wales. There has already been substantial delay – if there were to be a trial in England greater, not lesser, delay would be bound to arise.

104. (*f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction* – Mr Hawkes submits that the use of live-links, mutual legal assistance and the traditional comity between nations would ensure the proper and timely disclosure of prosecution evidence.

105. To my mind, the point is self evident. There are multiple co-accused (in total there are 56 participants in the alleged conspiracy) – most of them awaiting trial in Hungary. It would be wholly impracticable to suppose that RP EH could be tried alone or with some only of his co-accused in the UK.

106. *(g) D's connections with the United Kingdom* – Mr Hawkes submits that RP EH has lived in the UK for over three years. His wife and two-year-old daughter, Eysan Horvath (3/12/2018) are also in this country – "The UK is undoubtedly the RP's home. More significantly, it is a country in which Roma do not face discrimination." Further, where extradition is barred on the grounds of forum, it creates an expectation that a UK prosecution will follow, in the absence of any expression of belief to the contrary.

101. I disagree. RP EH is not a UK national. In contravention of an obligation to notify any change of address, he absconded from Hungary in order to avoid serving a prison sentence there. I find that as a fact - RP EH having chosen to give no evidence contradicting that assertion to me which could be tested in cross examination.

107. RP has not been in the UK for a substantial period. He has no strong UK ties to a particular location. It appears from RP MH's evidence that they have an "on/off" relationship – and so no substantial ties to each other.

108. He had low paid/low skilled work here, and does not own property here. He is alleged to have used the UK as the overseas base for a criminal conspiracy which he led from here. He has been in custody for 6 months or so in these proceedings. He has one child currently in the care of RP MH. I disagree with the assertion that if I were to discharge RP EH under s.19B that an expectation would then exist that he would be prosecuted here. There is nothing whatsoever to suggest that the UK police have any intention of investigating his activities here, nor that the CPS has given the slightest consideration to prosecuting RP EH here.

109. RP EH has no real connections to the UK at all. As Ms. Bostock and Ms. Burton put it: "Plainly, the extradition of Hungarian citizens to Hungary to stand trial for defrauding other Hungarian citizens from their homes in Hungary is in the interests of justice. This is particularly so when proceedings have already begun in Hungary, the evidence has been gathered there, all witnesses and complainants are located there as well as the majority of co-defendants and there is no indication that the UK authorities seek to initiate a prosecution here. The only reason to prosecute in the UK is for the current convenience of this RP and the minority of defendants."

110. The balance of the above factors weighs in favour of the criminal proceedings continuing in Hungary rather than commencing afresh here in the UK. Applying the overall "evaluative" approach preferred by Holroyde LJ, I cannot conclude that the "Forum Bar" should prevent the extradition of RP EH.

s.20 EA 2003 – RP EH

111. I must decide whether RP EH was convicted in his presence or whether he was deliberately absent. If "yes" I must proceed under s.21 EA 2003.

112. In respect of his EAW 3 – RP EH was questioned as a suspect and gave evidence in Court. He was under an obligation to notify of any change in address but did not do so. Whilst he was not present when sentenced to 2 years and 6 months' imprisonment on 12th April 2020, he was aware of the hearing and failed to attend. As such, he was deliberately absent.

113. In respect of his EAW 4 – he was not present when sentenced to 1 year 6 months' imprisonment on 5th July 2018 but he had been questioned at the police station on three occasions. He was also subject to a residence requirement which he breached having received

the indictment personally on 19th October 2017. He was therefore also fully aware of the proceedings and was deliberately absent from them.

114. In respect of his EAW 6, he was present when he received a sentence of 1 year 6 months' imprisonment on 17th May 2016 (final on 30th June 2017). He did not surrender to serve that sentence and (again) left his residence in breach of a requirement to notify his whereabouts. Again, he was deliberately absent.

10. In respect of his EAW 10 – he was present at first instance and received 2 years' imprisonment. He personally received the summons to the appeal hearing on 22nd November 2017 and his brother received his summons to prison on 23rd January 2018. Again, he was deliberately absent.

115. Accordingly, I must move on to s.21 EA 2003.

s.21 EA 2003 (RP EH only) / s.21A(1)(a) EA 2003 – both RP's

116. I must decide whether extradition would be compatible with each RP's Convention rights within the meaning of the Human Rights Act 1998. Only RP EH faces extradition under conviction warrants, where the applicable human rights assessment is under s.21 EA 2003). Both RP's face extradition in respect of allegation warrants where I must consider the compatibility of the extradition requests under s.21A EA 2003.

117. As the test is identical under each section, I will consider the "human rights" impacts under this joint heading.

118. Relevant Convention Rights in raised are:

Article 3 – prison conditions (both RP's)
Article 5 – right to a speedy trial (RP MH)
Article 6 - excessively lengthy proceedings/delay (both RP'S)
Article 8 – family life (both RP's)

Considering Article 3

119. Mr. Hawkes submits that the assurances proffered to-date are inadequate and unreliable, since previous assurances have been breached.

120. Mr. Hall submits the assurance which has been provided is plainly inadequate:

i. It only provides a generic assurance as to minimum space.

ii. It is entirely silent on material conditions, which *Varga v Hungary (2015)* 61 EHRR 30 found to be systemically Article 3 ECHR non-complaint.

iii. The ECtHR has explicitly condemned Palhlam's conditions of detention in Varga (at [84]). There is no evidence of improvement.

iv. It does not provide details as to the conditions of detention in which it is anticipated that Ms Horvath will likely be detained and therefore fails to comply with *ML C-220/18 PPU* in that the executing court "is required to assess only the conditions of detention in the prisons in which, according to the information available to it, it is likely that that person will be detained, including on a temporary or transitional basis".121. He submits that Dr. Csire's report demonstrates that while he is not concerned about the conditions and space per prison in Szombathely and Tiszalok, he has "significant concerns" relating to other prisons: 13-14. Dr Csire is of the opinion that transit represent a real risk of Article 3 non-compliant detention. Dr Csire notes that females are held in Kalocsa, Palhalma or Eger prisons, which are all 100-150km from Budapest: 12.

122. There is a rebuttable presumption that EU countries, being signatories to the ECHR as a condition of membership of the EU, will comply with ECHR requirements (see e.g. *Elashmawy v Italy [2015]* EWHC 28 (Admin) at §50) in the absence of clear, cogent and compelling evidence to the contrary (*Krolik and others v Judicial Authorities of Poland* [2012] EWHC 2357 (Admin)). Something approaching an international consensus is required, if the presumption is to be rebutted.

123. That presumption has been lost in the case of Hungary (indeed Hungary concedes as much) – but **only** on the basis of prison overcrowding.

124. In *Fuzesi* [2018] EWHC 1885 (Admin) the EWHC had before it prison assurances in the following terms:

> *"The Ministry of Justice of Hungary and the National Headquarters of the Hungarian Prison Service, which has jurisdiction in Hungary to provide this binding assurance, guarantees that [the first appellant] will [...] during any period of detention for the offences specified in the European arrest warrant, be detained in conditions that guarantee at least 3 square metres of personal space. [The first appellant] will at all times be accommodated in a cell in which he will personally be provided with a guaranteed personal space.*

"As of 1 January 2015, Hungary has signed, ratified and implemented the Optional Protocol to the UN Convention against Torture (OPCAT) and has set up The General Ombudsman as its National Preventative Mechanism. Accordingly, the General Ombudsman will monitor compliance with this assurance."

125. In *Fuzesi*, the court noted it had before it an assurance in the same terms as that considered by an earlier division of the High Court in *GS:*

"In GS, the Divisional Court considered whether assurances given by the Hungarian authorities in the context of prison conditions following the decision in Varga had the effect of dispelling the doubts which would otherwise exist as to the risk of a violation of Article 3 if a person were extradited to Hungary. Burnett LJ (as he then was) gave the main judgment and Ouseley J agreed with him. Burnett LJ considered the decision of the European Court of Human Rights in Varga and its decision in Othman. He concluded that the assurances which were given by the Hungarian authorities did have the effect of dispelling the doubts which would otherwise exist (see [6] and [36]). At [31] he said:

> *"The position with regard to these appellants, and any other requested persons sent with the benefit of this assurance, is that all will have a copy of the assurance in their possession. Most will have had lawyers acting for them in England and Wales to whom they could complain if the assurance is not honoured. All will have lawyers acting for them on their return to Hungary with whom, similarly, they could raise a lack of compliance with the assurance. The Ombudsman has an official role in monitoring prison conditions. He is mentioned in the assurance and would be another obvious point of complaint were something to go wrong. The information provided after the hearing shows that the assurance is recorded on a prisoner's file. That travels with him around the system. No complaints so far have been made to the Ministry or the prison authorities. All this suggests that any establishment dealing with a prisoner with the benefit of the assurance would be aware of it and that there are effective ways in which non-compliance could be raised. It also suggests, quite apart from positive information now available and set out in [17] above, that there is no reason to suppose that the assurance is not being honoured."*

At [35] Burnett LJ described the assurance as "a solemn diplomatic undertaking by which the Hungarian authorities consider themselves bound". At [36] he concluded on this point:

> *"In my judgment there is no basis for concluding that the assurance given by the Hungarian authorities relating to the treatment of these appellants (and all those on the list or who might be added to it) will not be honoured. The presumption that it will be has not been displaced. The recent evidence suggests that it has in fact been honoured. It follows that the grounds for believing that there is a real risk of treatment contrary to Article 3 of the Convention arising from the pilot judgment in Varga in the absence of the assurance, have effectively been met by the assurance ..."*

126. I have assurances in the same terms as was considered by the EWHC in *Fuzesi* in respect of both RP's. There is no basis upon which I can conclude that they are inadequate so far as any prison in which each RP will be held are concerned.

127. On both RP's behalf, but more particularly on behalf of RP EH, it was submitted that the conditions of inter prison transfers are non-Article 3 compliant. That is based on Dr. Csires anecdotal accounts from his clients that conditions on prison transfer vehicles can involve transfers of up to 12 hours at a time, with no stops for water, food or toilet breaks.

128. Self evidently, Dr. Csire has no personal experience of prison transfers. There is nothing in the open source materials to confirm that such privations are a routine feature of prison transfers in 2021. The best Mr. Hawkes could demonstrate was the contents of a CPT report from 2008 – which is hardly "up to date" material. True, he could cite a CPT Report from 2018 concerning the "parading" of prisoners on "leashes" in front of the media as they were taken to court. But beyond that headline, there is nothing to suggest that either RP will undergo what was described as " demeaning" conduct which "might" be considered as degrading.

129. Back to basics – an EU signatory can be presumed to act in a way that protects fundamental rights unless compelling evidence to the contrary exits. There is no pilot judgment to that effect. There is no international consensus. There is simply no such evidence that inter-prison transfers are non-Article 3 compliant. I do not, then, need to consider whether Article 3 extends to motor vehicle transfers between prisons at all. I regard this challenge as weak. I dismiss it.

Considering Article 5 – RP MH

130. Article 5 provides that:

> *1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
>
> *…*
>
> *c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; …*
>
> *3. 'Everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of this Article … shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.' …*

131. Mr Hall constructs this argument in this way. In *Lakatos v Hungary (21786/15),* 26 June 2018, the ECtHR found that a period of three years and 6 months' pre-trial detention (arrest to first instance conviction) breached Article 5 ECHR: [69]. The ECtHR did not institute the pilot judgment procedure. However, it noted that there had been no improvement since a Committee of Ministers' Resolution from 2011 regarding unreasonable pretrial detention and, further, that Hungary had been repeatedly condemned [7][10] by the ECtHR for the failure to deal with this issue: [85]. The ECtHR equally observed that at the time of the decision, there were approximately 60 applications raising the same issue, which demonstrated that the applicant's case "was not prompted by an isolated incident, it must not be overlooked that the cases have accumulated on the Court's docket over a period of more than five years": [86]. The ECtHR left it open to a future date as to whether the pilot judgment procedure should be implemented.

132. He submits that there is therefore evidence from the ECtHR's judgments that there is extensive pre-trial delay in Hungary. This has not been remedied. In turn, therefore, extradition poses a real risk of a flagrant denial of Ms Horvath's Article 5 ECHR rights.

133. In response, JA submits that an individual past incident of a single breach such as that relied upon in RP MH's submission is not sufficient to present a forward going 'real risk' because it is not evidence of a systemic problem but rather a single incident. Whilst there may

well be other similar claims outstanding, the RP concedes that a pilot judgment procedure has not been initiated and therefore there is no finding of a 'systemic' issue with Article 5 being breached in Hungary.

134. It is accepted that issues might exceptionally be raised under Article 5 and 6 in extradition proceedings as recognised by the ECtHR in Soering v United Kingdom [1989] 11 EHRR 439. The test to be applied is 'a flagrant denial of a fair trial' such as will completely nullify the right in the destination country - *Kapri (AP) v the Lord Advocate representing the Government of the republic of Albania (Scotland)* [2013] UKSC 48 at §32 per Lord Hope.

135. In *R (Ullah) v Special Adjudicator [2004] 2* AC 323, the House of Lords stated that a person who relies on either Article 6 or Article 5 as a bar to extradition has to establish a strong case. Lords Bingham, Steyn and Carswell all emphasised the "high threshold test" that had to be satisfied and that "flagrant" constituted a complete denial of the right to a fair trial or process: see [24], [50] and [69] respectively.

136. The burden of establishing such a breach lies on the requested person and the extremely high threshold is demonstrated by Goldring LJ in *Ismail v Secretary of State for Home Department [2013]* EWHC 633 (Admin) at paragraph 102;

> *"For article 6 to be engaged the disregard of a person's Article 6 rights must be flagrant. The test is a very high one. Some indication of that can be gauged from the fact that over the past twenty years Article 6 has not been successfully invoked in an extradition context. Even in a case where defence counsel was appointed by the public prosecutor, the applicants were held incommunicado until trial, the hearing was not public and closed to the defence lawyers and self-incriminating statements were obtained in highly doubtful circumstances, extradition was permitted (see Lord Brown's speech in RB (Algeria)). That underlines how very exceptional must be the circumstances to result in the application of Article 6 in a case such as the present."*

137. Dr. Csire's evidence on this point does not support RP MH at all. He estimates that 90% of cases conclude within 12 months. None go beyond 3 years – unless the offence carries life imprisonment (which is not the case here).

138. Further, the open-source materials confirm that there is a functional system in place for the grant of bail. On Dr. Csire's evidence, RP MH's opportunity for bail will increase if she

approaches 12 months in custody before the trial starts. There is an overall time limit of 3 years. The courts must review bail every 3 months.

139. In short – RP MH will not, if extradited, disappear into an unregulated black hole so far as the time limits on her trial, or pretrial detention, are concerned. It cannot be shown that she faces a flagrant denial of justice so far as Article 5 is concerned. This ground of challenge fails.

Considering Article 6 – RP MH

140. Article 6 provides:

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law …"*

141. The Committee of Ministers of the EU last met in December 2020 and expressed *"its deepest regret about the long stalemate and the complete absence of progress in this group of cases that appears to persist for nearly two years (since November 2018) although the deadline set by the Court's pilot judgment expired more than four years ago."*

142. The group of cases in question relate to civil proceedings.

143. In *Barta and Drajkó[1]* (No. 35729/12, final on 17 March 2014), concerning criminal proceedings, the Committee of Ministers of the EU noted that *"in view of the systemic situation which it has identified, […] general measures at national level are undoubtedly called for in execution of the present judgment, measures which must take into account the large number of persons affected. To prevent future violations of the right to a trial within a reasonable time, the respondent State should take all appropriate steps, preferably by amending the existing range of legal remedies or creating new ones, to secure genuinely effective redress for violations similar to the present one."*

144. That is hardly "up to date" evidence – being 7 years ago. Again, I look to Dr. Csires estimates as to the likely trial timeline in this case – which I don't need to repeat.

145. And, again, as it was put on JA's behalf, the pilot judgment relied upon to suggest a risk of 'flagrant denial' of a fair trial due to the length of time before trial (*Gazso v Hungary (App 48322/12)* relates to civil proceedings and dates back to 2015. Thereafter the current status summaries of Committee of Ministers of the EU make clear that *'new codes of civil,*

administrative and criminal procedure entered into force in 2018…expected to reduce the length of judicial proceedings'.

40. There is no recent or up to date 'international consensus' or other evidence to demonstrate a real risk of a flagrant denial of a fair trial in criminal proceedings as a result of delay. This ground of challenge fails.

Considering Article 8 – Both RP EH & RP MH

146. I make no apology for setting out in relatively full detail the contents of the leading triumvirate of cases on this topic. Article 8 is not a general bin into which all failed arguments can be tossed in the hope of striking lucky. *Norris v Government of the USA(No.2) [2010] UKSC 9, [2010] 2 AC 487, HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25, [2013] 1 AC 338* and *Celinski [2015] EWHC 1274 (Admin),* define the approach to be taken by the courts in considering Article 8 in the context of extradition proceedings. I set out in some detail the observations of each of the Courts, so that it is clear the principles I have had in mind, and have applied in this case:

Norris

147. The Supreme Court made the following observations in a case concerning a relatively elderly requested person, and his similarly elderly wife, neither of whom were in good health:

- It is of critical importance in the prevention of disorder and crime that those reasonably suspected of crime are prosecuted and, if found guilty, duly sentenced. Extradition is part of the process for ensuring that this occurs, on a basis of international reciprocity – [52];
- the interference with human rights will have to be extremely serious if the public interest is to be outweighed [55];
- The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves [56];
- Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition;

- it is legitimate for the judge to consider whether there are any relevant features that are unusually or exceptionally compelling. In the absence of such features, the consideration is likely to be relatively brief [62];
- If…. the nature or extent of the interference with article 8 rights is exceptionally serious, careful consideration must be given to whether such interference is justified. In such a situation the gravity, or lack of gravity, of the offence may be material;
- The importance of giving effect to extradition arrangements will always be a significant factor, regardless of the details of the particular offence [63];
- Usually the nature of the offence will have no bearing on the extradition decision;
- If, however, the particular offence is at the bottom of the scale of gravity, this is capable of being one of a combination of features that may render extradition a disproportionate interference with human rights;
- Rejecting an extradition request may mean that a criminal never stands trial for his crime. The significance of this will depend upon the gravity of the offence;
- when considering interference with article 8, the family unit has to be considered as a whole, and each family member had to be regarded as a victim [64]
- the effect of extradition on innocent members of the extraditee's family might well be a particularly cogent consideration [65];
- If extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge the extradite;
- Interference with private and family life is a sad, but justified, consequence of many extradition cases. Exceptionally serious aspects or consequences of such interference may however outweigh the force of the public interest in extradition in a particular case [102];
- It hardly needs to be said that there is a strong public interest in international co-operation for the prevention and punishment of crime. Consequently, the public interest in the implementation of extradition treaties is an extremely important factor in the assessment of proportionality [127];
- As a result, in cases of extradition, interference with family life may easily be justified under Article 8(2) on the basis that it is necessary in a democratic society for the prevention of crime [128];

- It is inherent in the extradition of a citizen of the requested state that it is almost certain to involve an interference with family life, and that it is why it has been said that it is only in exceptional circumstances that extradition to face trial for serious offences in the requesting state would be an unjustified or disproportionate interference with family life [130];
- The essential point is that such is the importance of preserving an effective system of extradition, it will in almost every circumstance outweigh any article 8 argument. This merely reflects the expectation of what will happen. It does not erect an exceptionality hurdle [136];
- the individual facts of each case can be evaluated but that evaluation must perforce be conducted against the background that there are substantial public interest arguments in play in every extradition case. That is not an a priori assumption. It is the recognition of a practical reality [137];

HH

148. The Supreme Court made the following observations in the context of two cases involving the parents of young children (one in which both parents were sought for serious matters, their 3 children being aged 1,8, and 3).

149. In summary, extradition will be refused if it would result in a disproportionate interference in a person's family and/or private life, see Lady Hale at [8], where five propositions of practical significance were set out.

- The question is always whether the interference with the private and family lives of the Requested Party and other members of his or her family is outweighed by the public interest in extradition (sub-§3).
- There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial, and that there should not be safe havens to which people can flee in the belief that they will not be sent back (sub-§4).
- That public interest always carries great weight, although the weight attached to it varies according to the nature and seriousness of the crimes involved (sub-§5).
- The delay between the time the crimes have been committed and the request for extradition may both diminish the weight to be attached to the public interest and increase the impact upon private and family life (sub-§6).

- It is likely that the public interest in extradition will outweigh the article 8 rights of the Requested Person and the family unless the consequence of the interference with the article 8 rights will be exceptionally severe (sub-§7).

150. The court in *HH* noted that *Norris* concerned an adult couple and so the court did not, and did not have to, consider the special position of children [26] – and that *HH* gave the court the opportunity to "fill that gap" [27] -

- Section 21 requires the judge to decide whether the person's extradition would be compatible with the Convention rights and to discharge the person if it would not [29];
- Some particularly grave consequences are not out of the run of the mill at all. Once again, the test is always whether the gravity of the interference with family life is justified by the gravity of the public interest pursued [32];
- [children's] best interests are a primary consideration, although not always the only primary consideration and not necessarily the paramount consideration [33];
- This gives them an importance which the family rights of other people (and in particular the extraditee) may not have;
- children need a family life in a way that adults do not. They have to be fed, clothed, washed, supervised, taught and above all loved if they are to grow up to be the properly functioning members of society which we all need them to be;
- Their physical and educational needs may be met outside the family, although usually not as well as they are met within it;
- their emotional needs can only be fully met within a functioning family;
- Depriving a child of her family life is altogether more serious than depriving an adult of his. Careful attention will therefore have to be paid to what will happen to the child if her sole or primary carer is extradited;
- the effect upon the child's interests is always likely to be more severe than the effect upon an adult's, the court may have to consider whether there is any way in which the public interest in extradition can be met without doing such harm to the child;
- One thing is clear. It is not enough to dismiss these cases in a simple way—by accepting that the children's interests will always be harmed by separation from their sole or primary carer but also accepting that the public interest in extradition is almost always strong enough to outweigh it [34];

Younger Children

- Of the loss of the primary attachment figure while a child is still under the age of four, the court observed that such losses can have lasting effects upon a child's development.
- p 19 of the paper published by the Children's Commissioner for England in January 2008, entitled *Prison Mother and Baby Units—do they meet the best interests of the child?*, that

> *"Attachment between babies and their mothers or primary caregivers starts in the early stages of life and babies become attached by around six months. Severe psychological damage may occur to babies if the bond or attachment with the primary caregiver is severed between the age of six months and four years …"* [145]

Generally

- There are a number of reported examples of sentences of immediate imprisonment, almost all measured in months, which, even before article 8 acquired the force of law, the Court of Appeal set aside in the interests of children of whom the defendant was the sole or primary carer [170];

Celinski

151. A Divisional court in which Thomas LCJ gave the leading judgment gave the following observations:

- HH concerned cases each of which involved the interests of children and the judgments must be read in that context;
- the public interest in ensuring that extradition arrangements are honoured is very high
- So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice;

152. He expressed his expectation that the appropriate judge address these factors expressly in their reasoned judgment. He added:

- the decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect;

- it is essential to bear in mind the procedures under Part I are based on principles of mutual confidence and respect between the judicial authorities of the Member States of the European Union;
- The independence of prosecutorial decisions must be borne in mind when considering issues under Article 8;

153. In respect of an **accusation** EAW:

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

154. In respect of a **conviction** EAW:

- The judge at the extradition hearing will seldom have the detailed knowledge of the proceedings or of the background or previous offending history of the offender which the sentencing judge had before him;
- Each Member State is entitled to set its own sentencing regime and levels of sentence. Provided it is in accordance with the Convention, it is not for a UK judge to second guess that policy. The prevalence and significance of certain types of offending are matters for the requesting state and judiciary to decide; currency conversions may tell little of the real monetary value of items stolen or of sums defrauded. ….. if a state has a sentencing regime under which suspended sentences are passed ……. the UK should respect the importance to courts in that state of seeking to enforce non-compliance with the terms of a suspended sentence

155. As to questioning the severity of the sentence and the issue of factors suggesting greater leniency should have been exercised by the sentencing court, it will rarely be appropriate for the court in the UK to consider whether the sentence was very significantly different from what a UK court would have imposed, let alone to approach extradition issues by substituting its own view of what the appropriate sentence should have been.

Children

- "When resistance to extradition is advanced…. 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….. 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.
- …… 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);"

Approach

156. The judge, after finding the facts, should list the factors that favoured extradition and the factors that militated against extradition [and] set out his/her conclusion as the result of balancing those factors with reasoning to support that conclusion.

157. Dealing with each of RP EH and RP MH in turn:

RP EH

158. Although RP EH declined to give evidence before me, I now set out those contents of his proof which are relevant to his Article 8 rights. He was born and raised in Hungary and is a Hungarian citizen. He has two adult sons from a previous relationship who live in Hungary. I note one of those is an alleged co-conspirator. He came to the UK in about February 2018.

159. He says he has been in a relationship with RP MH for over 3 years. After their arrest, their daughter, Eysan was taken into foster care. I note that she is now back in the day to day care of RP MH.

160. He has had various jobs in the UK. He worked in a car wash. He was also importing/export cars. His last job was working in a Polish shop. He claims that he was the family breadwinner.

161. He considers he was a good father to Eysan. He claims his relationship with RP MH is good "although we have our ups and downs." I note that is at odds with RP MH's account that they have periods of separation – unless that is what RP EH means by "ups & downs."

162. If extradited he won't be able to engage in care proceedings in respect of Eysan from Hungary. He would not be able to see RP MH and Eysan for a long time. He is worried that Eysan will forget him. He claims that prior to his arrest he supported them financially and emotionally.

163. He is in ill health. He has issues with his pancreas, bile and diabetes. He self injects insulin 4 times a day. Between 2018-2020 he claims he was repeatedly admitted to hospital and placed in intensive care due to pancreatic pain.

164. He used his brother Jozsef Horvath's name when admitted to hospital. He claims he used it out of desperation as he was in enormous pain and had no ID documents in his own name. He claims to have needed an urgent treatment otherwise he could have died. I observe that he almost certainly used a false name as he was a fugitive from the proceedings against him in Hungary – and he fled there to avoid serving the sentences of imprisonment he well knew had been imposed upon him there.

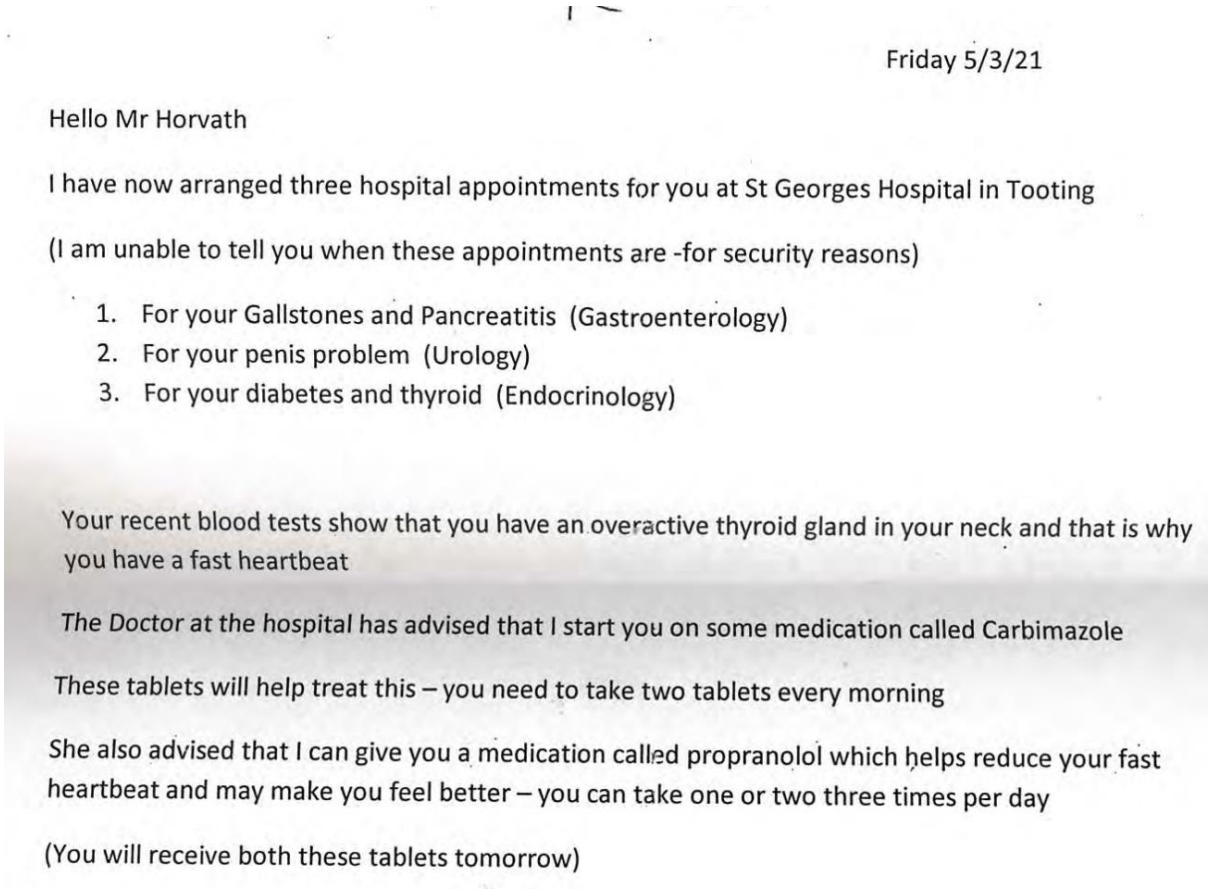
165. He claims to have last been in intensive care in September 2020 when he was admitted for 9 days. He says he was waiting for a date for an operation on his pancreas.

166. He says that his health is getting worse and that in Covid-19 terms he is considered to be a vulnerable person.

167. I note from his medical records that he had the following conversation with HMP Wandsworth healthcare on 25 January 2021 [98]:

Ongoing pancreas issues he says= pancreatitis 2019/ 2020
He says has stayed over 15-20 days in ITU in last few years with pancreatitis
Was due to have gallbladder removed - ? why ? gallstones - he is not sure
Lower abdomen painful.
Denied alcohol.
Noted recent high chol and triglyceries - (he said it was suggested he has been poisoned in past and that is why he had pancreatitis)
Was seen in hospital in Bradford and Manchester but used a different name so unable to trace the notes
He says some nausea and vomited yesterday But not today,
no weight loss, appetite is ok, no dairrhoea, no constipation, no jelly, pus or slime or blood from back side.
Examination: He looked well, Abdomen was soft and mildly tender but more so in epigastrium
Diagnosis: 1.I have arranged urgent NEWS score obs todat via H3
2. He needs urgent bloods and faecal samples also today and will need referral for Gastro at SGH once we have the bloods back
2. Have tasked admin to get any recent hospital letter

168. I have seen a letter from Dr McAllister of HMP Wandsworth confirming:



Friday 5/3/21

Hello Mr Horvath

I have now arranged three hospital appointments for you at St Georges Hospital in Tooting

(I am unable to tell you when these appointments are -for security reasons)

1. For your Gallstones and Pancreatitis (Gastroenterology)
2. For your penis problem (Urology)
3. For your diabetes and thyroid (Endocrinology)

Your recent blood tests show that you have an overactive thyroid gland in your neck and that is why you have a fast heartbeat

The Doctor at the hospital has advised that I start you on some medication called Carbimazole

These tablets will help treat this – you need to take two tablets every morning

She also advised that I can give you a medication called propranolol which helps reduce your fast heartbeat and may make you feel better – you can take one or two three times per day

(You will receive both these tablets tomorrow)

Factors supporting extradition:

- The constant and weighty public interest in extradition that those accused of crimes should be brought to trial and the public interest in ensuring that extradition arrangements are honoured is very high:

169. RP EH is wanted on a total of 11 warrants which disclose separate incidents of serious and persistent offending behaviour. He has outstanding sentences totalling 7 years and 6 months' imprisonment for fraudulent behaviour.

- The public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice:

170. RP's proof of evidence states that he came to the UK in February 2018. At this point he had just received the summons to attend prison on EAW 10, had the outstanding sentence to serve on EAW 6 and outstanding proceedings in EAW 3 & EAW 4. It is therefore clear he moved to the UK as a fugitive on all 4 convictions warrants.

- Those convicted of crimes should serve their sentences:

171. As above.

- that the UK should honour its international obligations and the UK should not become a safe haven:

172. This is self evidently so.

- gravity of offences:

173. Convictions attracting sentences totalling 7 years and 6 months are not indicative of trivial offending. RP EH has a pattern of misconduct which appears to have followed him to the UK – from where he is alleged to have been central in a conspiracy that netted significant sums of money from some 220 vulnerable and elderly victims across a network of some 56 co-accused. This is a pattern of serious organised criminality.

Factors against extradition:

- Delay:

174. The oldest of the convictions date back to conduct occurring in 2014. There is then an accusation for fraud in February 2018 – immediately before RP EH fled Hungary to avoid serving his prison sentence. Thereafter, the pattern of accusations covers the period from RP EH's arrival in the UK until April 2020. I don't find any delay such as assists RP EH.

- Settled and rehabilitated:

175. Hardly. RP EH has moved around the UK, using a false identity in order, he claims, to obtain medical assistance from hospitals in Bolton and in the midlands. He has produced nothing to demonstrate that he was living openly in the UK and working gainfully and lawfully here. He is alleged to have worked hard in the UK to establish a large scale and profitable fraud.

- Employment:

176. See above.

- Relationship:

177. He claims a close relationship with RP MH – albeit one with its ups-and-downs. That is to be contrasted with RP MH's evidence that theirs was an on/off relationship.

- Child:

178. It appears he is the father of Eysan. There is no doubt that a child generally benefits from the presence of both parents in their life. But on the evidence before me, RP EH's presence in his child's life was on/off. I note he has children in Hungary. Although they may now be adult, he had no qualms in leaving Hungary – and close access to them – in order to save himself from having to serve a lengthy sentence of imprisonment.

- Health:

179. He is a diabetic. His medical records show that he is ill-disciplined in terms of self injecting his insulin. He has other ailments which require investigation. There is no verifiable record of previous in-patient treatment for pancreatitis. What is certain is that he does not currently require in-patient treatment for any condition. No reliance is placed on s.25 EA 2003. I do not regard his health condition as relevant to the Article 8 assessment. Hungary is an EU country which can be presumed to ensure the health concerns of its prison inmates will be met. There is nothing to contradict that presumption in this case.

- Covid 19:

180. There is nothing in the medical records to confirm that RP is classed as a particularly vulnerable person in terms of the risk Covid 19 poses to him. That said, I understand that those with diabetes are at a greater risk of viral infections generally and therefore I presume RP EH is at greater risk from covid 19 than a healthy person would be. However, he has been in HMP Wandsworth for more than 6 months now. He has not, that I am told, contracted covid 19. The efforts of the prison service to protect prisoners from the risks are evidently working in his case. If his extradition is ordered, then until international transfers are again permitted he will remain in a UK prison. Once his extradition can proceed (if ordered) I can rely on the general presumption that Hungary will safeguard its prisoners – including (so far as it is possible) from covid 19.

RP MH

Factors supporting extradition:

- The constant and weighty public interest in extradition that those accused of crimes should be brought to trial and the public interest in ensuring that extradition arrangements are honoured is very high;

- that the UK should honour its international obligations and the UK should not become a safe haven for those seeking to evade justice;
- gravity of offence - The specific offending is organised, serious and sustained. RP MH's alleged role was central in 12 of the offences, and in the laundering of £7200 of the proceeds of that offending. A lengthy sentence is likely to be imposed and the victims of the offending specific to this RP deserve justice;
- absence of delay – the offending is recent. The earliest allegation arises from early 2018, the most recent from April 2020.

Factors against extradition:

- Lack of gravity:

181. I include this point here in order to balance the overall gravity, based on its sheer scale, of the alleged conspiracy against RP MH's alleged role. Of 220 alleged frauds, RP MH is alleged to have been directly involved in 12 of them. Her role is said to have been to phone the victims of the fraud and impersonate an injured relative in order to persuade them to hand over funds to a Hungarian based accomplice. Looking at the relevant Fraud guideline published by the Sentencing Council, RP MH is a Category A3 offender. That produces a starting point of 3 years. In that the harm suffered by the victims was likely to be great, she might move up a category – to a starting point of 5 years. In that it appears that she played a secondary role to RP EH, she might move down the range – which spans 3 to 6 years based on £300k Her offending is alleged to have netted £40k. On balance, she could argue that her sentence would be 3 years after trial – 2 years on an early guilty plea. That is within the realms of a suspended sentence in the UK.

- Settled and rehabilitated:

182. Since her release on bail, RP MH has been reunited with her daughter. She is being accommodated by friends she met in the UK at her church. She is not in receipt of benefits nor is she working. She is caring full time for her child It is not suggested that she continues to offend. Whilst it is early days in the sense that her last offending is alleged to have taken place in April 2020, it is a fact that she had no other convictions.

- Relationship:

183.RP MH claims to have been in an off/on relationship with RP EH. It is clear from her evidence that if required to chose, she would abandon her relationship with him and focus on the upbringing of their child.

- Child:

184. Having be granted bail in January 2021, RP MH is now the sole carer for her child, of which RP EH is the father. She has two children in Hungary, but has no relationship with them at all. She says that is entirely the fault of her former husband and his family. It appears that a Hungarian family court made the decision that the children should live with their father. As her child in the UK was taken into care when she was first remanded in custody. It is clear that the UK social services have some oversight of her parenting abilities. She was, following her release, initially permitted supervised contact, but her child has now been returned to her full time care. I have seen a letter from the child's social worker which warns of the consequential harm should the child be separated from her mother again.

185. That said, there is a care plan of sorts in that RP MH hopes her father will come to the UK to "collect" the child if that becomes necessary. That would require a decision of the family court. There would be an inevitable period in which the child would be held in foster care. There is no guarantee that the child would be placed with her grandfather.

Conclusion on Article 8

186. As observed in *Norris:*

> *• The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves [56];*
>
> *• Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition;*
>
> *• it is legitimate for the judge to consider whether there are any relevant features that are unusually or exceptionally compelling. In the absence of such features, the consideration is likely to be relatively brief [62];*

• *If…. the nature or extent of the interference with article 8 rights is exceptionally serious, careful consideration must be given to whether such interference is justified. In such a situation the gravity, or lack of gravity, of the offence may be material;*

RP EH

187. So far as RP EH's on/off partner RP MH is concerned, the consequences of interference with her Article 8 rights as a result of RP EH's extradition must be exceptionally serious before this can outweigh the importance of extradition. I do not conclude that to be the case. Given that they are co-accused, this assessment is somewhat artificial anyway. Because each wants to maintain the relationship with the other cannot be a reason to refuse their extradition in a case of considerable gravity – as this (by reason of its scale) is. That said, I don't find that there is a family relationship between RP EH and RP MH. The latter is clear that she will prioritise her child over RP EH. Theirs was an off/on relationship anyway. I find no basis to discharge RP based upon the impact of his extradition upon his partners Article 8 Rights.

188. So far as RP EH's child Eysan is concerned, Article 8 is obviously engaged. The test is whether the gravity of the interference with family life is justified by the gravity of the public interest in extradition. I do not consider that the impact of RP EH's extradition upon Eysan would produce profound and irretrievable consequences for her. I accept that to return RP EH to Hungary to serve at least the 7 years and 6 months already imposed upon him will fracture, perhaps permanently, his relationship with his youngest child. But the alternative – that he avoids justice in circumstances where he never would in the UK, outweighs his child's right to a relationship with him.

189. As to the impact on RP EH himself – he is a criminal who left Hungary to avoid imprisonment. Worse, it is alleged that he then used the UK as a base from which to operate a large scale and peculiarly nasty system of offending. He was living as a fugitive in the UK, and using a false identity to avoid detection. It is impossible to conclude that his Article 8 Rights outweigh the very weighty imperative that he be returned to Hungary to serve the sentences already imposed, and to face trial in respect of those matters for which he is accused.

RP MH

190. So far as RP's partner RP EH is concerned, I do not repeat what I have already concluded about him. There is no basis for refusing RP MH's extradition based on her on/off life with him or vice versa.

191. So far as RP MH's child Eysan is concerned the test is whether the gravity of the interference with family life is justified by the gravity of the public interest in extradition.

192. I have had to consider the interests of young children when sitting as a judge of the Family Court, and when sitting as an Appropriate Judge in extradition proceedings. I am not going to repeat the observations of the Courts in *HH* or *Celinski.* I have the relevant text and tests well in mind. If I order RP MH's extradition, Eysans immediate care will fall to the local authority in the place she is living. There will then be proceedings in a family court to ascertain how her care needs can best be met. It is not simply a case of RP MH's father coming to the UK to collect the child. There would have to be an assessment of him as a care giver. It may be the family court in England would transfer the proceedings to Hungary. It may be that RP MH will obtain bail if returned there. If so, that is unlikely to be immediate. I accept Dr. Csire's evidence as to that.

193. Whilst there are many maybe's, there is a certainty. As observed in *HH* the crucial years in any child's life, the period when the form strong attachments to a parent, are the years up to the age of 4. Any fracture of a significant relationship in that period will have profound consequences for that child's welfare forever. If RP MH and Eysan are separated for any appreciable period over the next two years, irreparable harm will be caused to Eysan. That is the certainty to which I refer.

194. What is more speculative is whether that is what would happen. I am satisfied that RP MH is to be unlikely that be granted bail in Hungary in the first 12 months after her arrival there, if bailed at all. That is Dr. Csire's evidence and I accept that. The facts of the cases concerning RP MH and the fact she based herself overseas with her fugitive partner do not bode well for her chances of bail.

195. If I discharge RP MH now, it does not mean that she will never stand trial in Hungary. It does mean that her trial will be delayed. In two years time, her child will be approaching 5 years of age. JA may then re-issue the EAW. RP MH would then be expected to take steps for the transit of her child into the care of her father. The consequent distress to Eysan will no doubt be significant – but the consequences would not (according to attachment theory) be irretrievable.

196. I have made an assessment of the sort of sentence that might be imposed upon RP MH if she were tried in the UK. With credit for a guilty plea, it is not inconceivable that she would receive a suspended sentence in the UK – given the impact upon the child. Whether that is a

possibility in Hungary is something I cannot assess. But it gives me a point of reference when balancing the usual imperative to honour an extradition request made under the FD EAW against the Article 8 Rights of an infant to remain in the care of a birth parent.

197. I do not know whether RP MH would be granted bail in Hungary, or whether she would avoid an immediate custodial sentence there. If she were refused bail, and if she were to receive an immediate custodial sentence there, the consequential harm to Eysan would be significant and irretrievable. I am not prepared to risk Eysan's long term welfare at this crucial stage in her development. On this sole basis – and anticipating that RP MH will face a further extradition request within a matter of 2 to 3 years from now, I discharge her from this extradition request.

198. As to RP MH's Article 8 Rights – insofar as they are the mirror of those of her daughter, I would discharge her on the basis of the interference with her relationship with her daughter – but on no other basis. She ought to be tried for her alleged offending – and I hope she will be – but in due course and not before Eysan is older than 4 or 5 years.

199. I do regard the balance to have been a fine one – exercised, just, in favour of RP MH and Eysan.

s.21A(1)(b) EA 2003 – accusation warrants

200. I must consider whether each RP's extradition would be disproportionate, having regards only to:

> (a) The seriousness of the conduct alleged to constitute the extradition offence;
>
> (b) The likely penalty that would be imposed if RP is found guilty of that offence;
>
> (c) The possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of RP.

201. Neither Mr. Hawkes nor Mr. Hall mounted any argument that extradition would be, with regards only to these criteria, disproportionate. Accordingly, my brief observations on these factors are:

> (a) The scale of the alleged offending is such that it cannot sensibly be regarded as anything but serious. RP MH's alleged role is much smaller than RP EH's but significant nonetheless.

(b) I have given some consideration as to the likely penalty when looking at RP MH's Article 8 position. Even being as generous as possible to her, the least sentence she would receive were she to be sentenced by a court in England or Wales would be three years after a trial. RP EH must be looking at significantly more than that. In his case, the assessment is wholly artificial anyway, as he is to be returned to serve 7 years and 6 months imprisonment under sentences already imposed.

(c) It is clear that JA is in a position to try both RP's. That is why they are wanted there now. Again, so far as RP EH is concerned, he is sought to serve terms of imprisonment already imposed. There can be no less coercive alternative to extradition in his case. So far as RP MH is concerned, she is wanted for trial. That cannot take place without her being present in Hungary. There is no less coercive alternative to extradition.

202. My conclusion on this issue is that it is not disproportionate, within the limited meaning of s.21A(1)(b) to order RP EH's extradition. Nor would it be in respect of RP MH.

MY CONCLUSIONS SUMMMARISED & MY DECISION

203. I have considered all the live and documentary evidence placed before me, along with the submissions made on behalf of both parties.

204. I am satisfied to the necessary standard that there are no EA 2003 statutory bars to these extradition request.

RP EH

205. In respect of his EAW 3,4 & 6, I am satisfied under s.21 EA 2003 to the necessary standard that RP EH's extradition is compatible with his Convention Rights, those of RP MH and those of their child Eysan. I order his extradition in respect of each of those EAW's under s.21(3) EA 2003.

206. In respect of his EAW 1,2,5 & 7, I am satisfied under s.21A EA 2003 to the necessary standard that RP EH's extradition is compatible with his Convention Rights, those of RP MH and those of their child Eysan. Likewise, I am satisfied to the necessary standard that his extradition in respect of those EAW's is not disproportionate within the limited meaning of that word in s,21A(1)(b). I order his extradition in respect of each of those EAW's under s.21A(5) EA 2003.

RP MH

207. I am not satisfied that RP MH's extradition is compatible with Eysan's right to a family life with her mother RP MH. Similarly, I am not satisfied that RP MH's extradition is compatible with her right, for now, to a family life with her daughter Eysan. Accordingly, I discharge her under s.21A(4) EA 2003.

208. Any application to the High Court on appeal from this order must be given in accordance with the rules of court before the end of 7 days starting today. If no appeal is lodged, extradition should take place within the 10 days after that appeal period ends.

Appropriate Judge DJMC Michael Fanning