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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

*[2018] EWHC 3949 (Admin)*

CO/576/2018

Royal Courts of Justice

Thursday, 2 August 2018

Before:

MR JUSTICE JULIAN KNOWLES

B E T W E E N :

PETER GASPAR Applicant

- and -

HUNGARIAN JUDICIAL AUTHORITY Respondent

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MR G HEPBURNE SCOTT(instructed by Bark & Co) appeared on behalf of the Applicant.

MS A BOSTOCK(instructed by CPS Extradition) appeared on behalf of the Respondent.

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## **J U D G M E N T**

MR JUSTICE JULIAN KNOWLES:

1. This is an appeal by Peter Gaspar and there is also a renewed application for permission to appeal. The appeal is in relation to Art.3 of the European Convention on Human Rights, permission having been granted by Ouseley J. The Art.3 ground on which permission was granted is in relation to prison conditions in Hungary.
2. The renewed application for permission to appeal is in relation to Art.8 of the European Convention on Human Rights and what is said would be the disproportionate impact, in particular, on the appellant's young son.
3. Turning to the procedural history of the case, the appellant was arrested on 8 December 2017 and was granted conditional bail. In due course an extradition order was made by District Judge Baraitser on 1 February 2018 and then, in due course, he was granted permission to appeal to this court as I have indicated.
4. The European Arrest Warrant on which the appellant's extradition is sought was issued by a Hungarian Judicial Authority on 21 March 2017 and certified by the National Crime Agency on 1 June 2017. It relates to two offences. The first offence of burglary is, in domestic terms, to be broadly regarded as a commercial burglary. The offence was committed on 10 May 2011 and it is said that the appellant, with others, broke into a shop and stole jewellery which appeared to have some considerable value, certainly so far as the local currency is concerned. The second offence is one of theft and it is said that on 16 June 2009, the appellant, with others, stole a number of items including binoculars, a torch and other matters from a car. The appellant, for these offences, was sentenced to a total of 1 year and 8 months' imprisonment of which 1 year, 7 months and 27

days remains to be served.

5. Dealing with the Art.3 ground of appeal first: at the time permission was granted, there was an issue under consideration by this court in relation to the Hungarian prison estate. Taking matters shortly, there was a pilot judgment of the European Court of Human Rights in *Varga and Ors v Hungary* 2015 61 EHRR. This judgment concluded that there were structural and systemic problems in relation to the Hungarian prison estate because of, in particular, overcrowding and on the back of that Hungary, in order to secure extradition, was required to give assurances in relation to where appellants were to be detained. Those assurances were found by the Divisional Court in *GS & Ors v Central District of Pest Hungary & Ors* [2016] EWHC 64 (Admin) to be sufficient. Since then, Hungary has taken commendable steps to solve the prison conditions so that the position of Hungary is that assurances are no longer required.
6. The issue of Hungarian prison conditions was considered very recently on 16 July 2018 in a judgment of Singh LJ, with whom Carr J agreed, in the case of *Fuzesi & Anor v Budapest Capital Regional Court Hungary* [2018] EWHC 1885 in which the court, in short order, held that assurances from Hungary were sufficient.
7. In Mr Gaspar's case, Hungary has provided assurance as to prison conditions. Therefore, realistically, Mr Hepburne Scott, whilst he is not in a position formally to withdraw the appeal, accepts that the point is unarguable in the light of the judgment in *Fuzesi* and therefore I dismiss the appeal in relation to Art.3.
8. So far as the Art.8 ground, on which Mr Hepburne Scott renews his application for permission having been refused by Ouseley J, Mr Hepburne Scott points to the fact that Mr Gaspar has a young son, who is in his formative years. Mr Hepburne Scott submits that the effect on the young son being separated from his father at this stage in his life is likely to have disproportionate consequences, in terms of severity, in terms of his emotional development such that that outweighs the strong public interest in extradition.
9. In his skeleton argument, Mr Hepburne Scott has helpfully summarised the relevant principles in relation to Art.8, which I do not need to repeat. They are well understood. They are contained, respectively, in the cases of *Norris v United States of America & Ors* [2007] EWHC 71 (Admin) , *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25 and *Polish Judicial Authorities v Celinski & Ors* [2015] EWHC 1274 (Admin) . These authorities are to the effect that although circumstances do not need to be exceptional, there does need to be some particularly severe consequence present in the evidence, so as to outweigh the strong public interest in this country honouring the extradition arrangements into which it had entered.
10. As I have observed in previous cases, that consideration applies with particular force in relation to the European Arrest Warrant because that is the corollary of free movement of persons within Europe. There is a particular need to ensure

that the United Kingdom, while it is still a member of the European Union, does not become a safe haven for criminals, particularly convicted criminals, from other European Union States.

11. Attractively and elegantly though the submissions made by Mr Hepburne Scott were, and while, on a human level, one obviously has sympathy for any young child which is to be separated from a parent, I am not persuaded that there is an arguable basis for concluding that the evidence in this case discloses a factor of such cogency that it can be arguably said to outweigh the public interest considerations which I have outlined.
12. For that reason, I refuse permission in respect of the renewed ground of appeal in relation to Art.8 and it follows that the renewed application is dismissed.

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This transcript has been approved by the Judge.