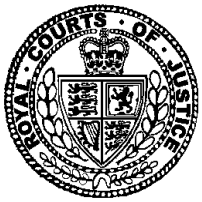

Neutral Citation Number: [2021] EWHC 3163 (Admin)

Case No: CO/1004/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

24th November 2021

Before:

MR JUSTICE FORDHAM

- -

Between:

FRANCIS EBAKO EKWOGE	**Appellant**
- and -	
CENTERAL DISTRICT COURT IN BUDA (HUNGARY)	**Respondent**

- -
- -

Rebecca Hill (instructed by Taylor Rose solicitors) for the **Appellant**
Stefan Hyman (instructed by CPS) for the **Respondent**

Hearing date: 24.11.21

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge,
after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM :

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is aged 36 and is wanted for extradition to Hungary. That is in conjunction with an accusation European Arrest Warrant (EAW) issued on 9 September 2019 and certified on 30 April 2020. The alleged offending to which the EAW relates is conspiracy to launder proceeds of crime, being significant sums, where the Appellant is said in May and June 2017 to have ordered others to transfer a sum in excess of €162,000 knowing that it constituted the proceeds of crime, there having been an underlying fraud committed on a company. The Appellant is a national of Cameroon who speaks French and English. Extradition was ordered by DJ Baraitser, as she then was ("the Judge") on 15 March 2021 following an oral hearing on 17 December 2020. Permission to appeal was refused on the papers by Eady J on 8 October 2021. A generic Article 3 ECHR ground of appeal has been abandoned in the light of the Supreme Court's decision in Zabolotnyi v Hungary [2021] UKSC 14, there being an Article 3 prison conditions assurance in this case dated 11 June 2020. Two issues now remain.

Section 2/Article 6 (Bogdan)

2. The first remaining issue is one which was raised (for the first time) in the grounds of renewal dated 13 October 2021. It is the section 2/Article 6 ECHR argument which was raised in the cases of Ambrozi, Bogdan and Lakner and was determined adversely to those requested persons by DJ Rimmer on 9 July 2021. This is the issue to which I referred in Magyar [2021] EWHC 2402 (Admin) at §13. An application for permission to appeal in Bogdan CO/3631/2021 was filed in this Court on 21 October 2021 and is understood to be pending before this Court. Ms Hill for the Appellant invited a stay pending determination of Bogdan. She told me that this course has been taken in other cases including Jaku CO/4488/2020, Lukacs CO/3586/2019, Makula CO/1063/2021, Hmus CO/1954/2018 and Zbolenski CO/3308/2018. Mr Hyman for the Respondent was neutral but recognised the fairness of adopting this course. I was satisfied, as I stated at the start of today's hearing, that it is appropriate to make the following order. (1) Permission to amend the grounds of appeal is granted and the application for permission to appeal on the section 2/Article 6 ground of appeal shall be stayed pending final determination in the High Court of the case of Bogdan CO/3601/2021, with liberty to apply. (2) The Appellant shall, within 14 days following the date on which Bogdan is finally determined in the High Court inform the Court and the Respondent whether he intends to pursue an application for permission to appeal on this ground and, if such an application for permission to appeal is to be pursued, shall file and serve written submissions in support of that application. (3) The Respondent shall have five working days thereafter to respond and the Appellant two working days thereafter to reply.

Article 3 (specific)

3. The second remaining issue is a specific Article 3 ECHR ground of appeal, which the Appellant seeks to maintain. That ground of appeal addresses the Article 3 risks said to be posed to the Appellant, by state and non-state actors, were he detained, arising due to his personal characteristics: specifically, as a black African man who does not speak Hungarian and who faces detention following extradition to Hungary. Ms Hill submits that the Article 3 prison conditions assurance is insufficient to allay the relevant

concerns arising from those specific characteristics, in the context of facing detention in the run up to trial and, if convicted and sentenced, after trial. She submits that the position is analogous to that which arose in Marku v Greece [2016] EWHC 1801 (Admin) at §19. In that case, the "good faith and binding assurance" from the Greek authorities was insufficient to dispel the substantial grounds for believing that there was a real risk that a requested person would be subjected to inhuman or degrading treatment of such severity as to engage and infringe Article 3 ECHR. That was in the context of evidence of "a sway of lawless and intimidating groups of prisoners unafraid to use violence where necessary", where there was insufficient evidence before the Court of resources, staffing, recruitment and training to address and remove the circumstances giving rise to the fear. So too here, says Ms Hill. She points to open-source material evidencing pervading racism and xenophobia and a lack of sufficient protection. She says that the evidenced basis, triggering the need for a response from the Respondent to specifically address it, is one which arises ultimately as a matter of "inference" but based on the evidenced picture in relation to the "wider perspective". That picture concerns discrimination of a serious and pervasive nature in Hungary and on the part of state officials; it involves specific concerns about prisons and about difficulties in raising complaints of ill-treatment and lack of protection in prisons; and it arises and in conjunction with what is known about lack of training and other measures.

4. Considering this case on the papers, Eady J concluded that it was not reasonably arguable that the materials relied on by the Appellant constitute evidence – with the requisite objectivity, reliability and specificity – which give rise to the need for a specific and sufficient assurance to dispel the real risk. In the Marku case the Court had referred (at §5) to the need for cogent evidence to be adduced that there was a real risk, such as necessitated an assurance sufficient to dispel it. The Court referred (at §6) to the question of whether there was objective, reliable, specific and properly updated evidence calling for a determination – specific and precise – of whether there were substantial grounds to believe that the individual concerned would be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 3. Mr Hyman for the Respondent in his written submissions has reminded me that where the harm is inflicted by "non-state agents" said to constitute Article 3 ECHR ill-treatment in the extradition or immigration removal context, what is raised is the question of (i) the real risk on substantial grounds for believing that the relevant individual will face serious ill-treatment at the hands of non-state agents, together with (ii) a failure in the state authorities' positive duties to provide reasonable protection against such criminal acts.

5. In a detailed (seven-page) section at the heart of her skeleton argument for this hearing Ms Hill had helpfully identified the open-source material, and key passages from that material, on which she relies. There was a review of Hungarian prison statistics published in 2020, which records that less than 5% of prisoners in Hungary (805) were foreign nationals. There is a report of the Special Rapporteur on the Human Rights of Migrants published in May 2020, reporting information about xenophobia and anti-migrant rhetoric in official and public discourses. There is a report of the Committee on the Elimination of Racial Discrimination published in June 2019 which refers to a lack of information on the work of the Office of the Commissioner for Fundamental Rights to prevent racial discrimination and xenophobia against vulnerable ethnic minorities, and which refers to the persistence of racist hate crimes, lack of clarity on criteria for the imposition of penalties against perpetrators, the prevalence of racist hate

speech by public figures, and the presence and operation of organisations promoting racial hatred within the State party, together with concerns about the lack of detailed information on training programs for state and public officials. There is a report of the Committee for the Prevention of Torture ("CPT") published in March 2020 recommending further steps to eradicate racially motivated abuse and discriminatory behaviour by members of the police and recommending a clear message regarding the use of force by custodial staff in certain named institutions. There is a report of the US Department of State published in 2019 referring to reports of inhuman and degrading treatment and abuse as sometimes occurring and to reported physical mistreatment of foreigners detained in transit zones. There is a submission of the Hungarian Helsinki Committee published in 2019 referring to xenophobic, anti-migrant and anti-refugee state-sponsored campaigns from 2015 onwards. There is a UN Human Rights Committee report published in May 2018 raising concerns about the prevalence of hate crimes and hate speech targeting minorities, and excessive use of force by arresting and interrogating law enforcement officials. There is a Politico article published in August 2020 about racism as an everyday reality for the 7,200 African residents living in Hungary (out of what was Hill tells me is an overall population of some 9.7m), against whom there is huge prejudice. There is a Eurobarometer report published in October 2017 which highlights attitudes towards immigration. Then there are January 2020, April 2020 and January 2021 publications by the Hungarian Helsinki Committee, describing steps to undermine the operation of a compensation scheme which had been designed to secure compensation payments to inmates who were the subject of prison overcrowding and other physical detention conditions.

6. Ms Hill accepts that the Judge accurately encapsulated the nature of her Article 3 argument in this passage in the judgment: "Ms Hill also submits that as a black African man who does not speak Hungarian, [the Appellant] is a particular risk. She relied on open-source information from which she invites the court to conclude that there exists within Hungarian society pervading racism and xenophobia. She submits that Africans represent a very small percentage of the Hungarian population and are the target of this racism. She goes on to argue that the Hungarian prison population as a microcosm of the wider population will reflect the prejudices in the community and points to evidence that some police officers have failed to respect the rights of foreign nationals." So far as the Appellant's own personal experiences in Hungary are concerned Ms Hill took me to the passage in the judgment where the Judge described the evidence which had been given at the hearing by the Appellant: "[He] gave a broad overview of his experiences of racism in Hungary. In summary he described how his wife's sister would not come to their house whilst a black man was living there; how some public houses in Hungary are for black people and some for white people; and that if a black person went into a white public house the police would be called; and that, as the president of the Nigerian and Cameroonian association, he was involved in a number of 'black matters', stating 'we have so many people arrested, I can't really pick one'. He himself has never been arrested."

7. In her oral submissions at today's hearing Ms Hill helpfully took me through key passages in the open-source materials to which I have already referred. I was particularly concerned to see (i) whether there was here an area of life within the prison population, for the some 805 foreign national prisoners who are inmates within it, and among them in particular for black Africans, which was the subject of evidenced concern of serious ill-treatment and lack of protection; or alternatively (ii) whether there

was a picture which substantiated the suggestion of a 'no-entry zone' where nothing could be known of the experiences of those inmates because of a prohibition or lack of access on the part of bodies who would have the remit and wish to be able to scrutinise and report. As it seemed to me, if the argument were viable it would need to arise in conjunction with evidence which (i) addressed the experience of those who are detained in prison or (ii) showed that that evidence could not possibly be adduced because of some 'blind-spot' in the scrutiny and observation of Hungarian prisons.

8. I was particularly assisted by the CPT report published in March 2020 following a visit by a delegation in November 2018 to a series of some nine institutions listed in appendix 1 to that report. The report addresses: the position of persons in police custody; the position of juvenile prisoners; and the position of adult male prisoners including inmates serving life sentences or very long terms of imprisonment. Ms Hill showed me three passages, in particular, from that report, to which I wish to make reference at this stage. The first was a description of how the delegation had heard "some accounts of resort to unnecessary or excessive force under apprehension" in police custody, including "one allegation by a juvenile of a threat of beatings", and had also "heard several accounts of verbal abuse of a racist nature, including from persons of Roma origin". The second was a passage which described how the delegation, during the 2018 visit, had "met with a number of foreign nationals who were or had recently been held by the police in the context of criminal proceedings". In that context there was a description of complaints about failures in being "provided with information as to rights", and lack of "assistance from the interpreter assigned" to those foreign nationals, and about being "made to sign documents without having their content explained to them". The third passage that I was shown recorded the delegation as having spoken to 'lengthy sentence' prisoners and "other prisoners" at named prisons. That passage went on to describe how the delegation "came across a few recent incidents involving the use of force by staff working in [a segregation and disciplinary] block", including "punches, kicks and blows with hard objects" which "could be unlawful, unnecessary or excessive". Reference was also made to problems regarding complaints, in the context of prisoners within that segregation and disciplinary unit, where what is identified is a "fear of retaliation" in circumstances where the complaints would be known to the custodian staff.

9. I have carefully considered, with Ms Hill's assistance, the materials that are before the court to see whether, directly or indirectly, or as a result of a proper "inference" based on the "wider perspective", they arguably satisfy the well-known evidential standards applicable in the context of Article 3 and needs for specific, tailored further information and assurances. Having done so, in my judgment, there is no realistic prospect that this Court on a substantive appeal would conclude that this body of open-source material as relied on by the Appellant is capable of constituting objective, reliable, specific and properly updated evidence demonstrating a picture from which the Court could properly conclude – including as a matter of proper inference – that there are substantial grounds for believing that the Appellant will be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 3, absent a further and specific assurance sufficient to dispel that real risk. In my judgment, the body of material relied on by Ms Hill – beyond reasonable argument – does not and cannot satisfy the requirements of cogency for evidence being adduced which, absent specific assurance to dispel it, could support the conclusion that there are substantial grounds to believe that the Appellant if extradited will be exposed to a real risk of inhuman or degrading treatment within the

meaning of Article 3 ECHR. I cannot accept that there is here a picture of prohibition on entry or monitoring by relevant organisations and agencies which serves to explain the absence of specific references in these materials to violence, engaging Article 3, whether at the hands of officials in Hungarian prisons or at the hands of non-state agents and unprotected sufficiently by those officials. In my judgment, neither on (i) the question of serious ill-treatment, nor (so far as concerns ill-treatment by non-state agents) on (ii) the question of failure by the state authorities to provide reasonable protection against such criminal acts, is the material adduced capable of constituting a viable platform for resisting extradition on Article 3 grounds. In giving her judgment on 15 March 2021, the Judge relevantly concluded that "the open-source materials relied on by Ms Hill… come nowhere near demonstrating [that] as a black African man who does not speak Hungarian, [the Appellant] is at real risk that his Article 3 rights will be breached in a Hungarian prison". I agree. Permission to appeal on the Article 3 ECHR ground is therefore refused.

24.11.21