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Case No: CO/1337/2021
CO/1350/2021
CO/1358/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL
Wednesday 4th May 2022

Before:
MR JUSTICE FORDHAM

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Between :

CSABA NEMETH, MARIA LAKATOS, MARIA HORVATH,	**Requested Persons**
- and -	
HUNGARIAN JUDICIAL AUTHORITIES	**Requesting State**

- -
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Mary Westcott (instructed by Lawrence & Co) for **Csaba Nemeth**
Amelia Nice (instructed by Lawrence & Co) for **Maria Lakatos**
Louisa Collins (instructed by Hodge Jones & Allen) for **Maria Horvath**
Amanda Bostock and Hannah Burton (instructed by CPS) for the **Requesting State**

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Hearing date: 30/3/22

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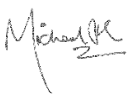
Approved Judgment

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

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:00 on 4.5.22

MR JUSTICE FORDHAM:

Introduction

1. This is a fourth judgment, following on from three earlier judgments from which the context can be seen. They are: [2021] EWHC 3366 (Admin) (9 December 2021); [2022] EWHC 224 (Admin) (3 February 2022); and [2022] EWHC 273 (Admin) (10 February 2022). It deals with the Requested Persons' applications for permission to appeal on the four points to which I referred to in §4 of the First Judgment, and §§4-10 of the Second Judgment. The arguments are directed at the judgment ("the Judgment") of DJ Fanning ("the Judge") on 8 April 2021 in the cases of Mr Nemeth and Ms Lakatos, after a hearing on 10 and 11 March 2021 at which they had been raised. In the Judgment, the Judge found against the Requested Persons in respect of each of the four points. Evidence adduced by the Requested Persons before the Judge included an expert report dated 17th February 2021 ("the Report"), together with oral evidence, by an attorney at law in Budapest, Dr Csire (together, "the Expert Evidence"). The Requested Persons submit that it is reasonably arguable that the Judge was "wrong" in the case of the four points or any of them. They also rely on putative fresh material, submitting that it is capable of being decisive. Counsel for the Requesting State say it is not reasonably arguable that the Judge's conclusions were "wrong" on any of the four points, on the material before the Judge or having regard to all the material including the putative fresh evidence, which they say is incapable of being decisive. The Requested Persons' arguments were advanced by Ms Westcott and Ms Nice, and adopted by Ms Collins for Maria Horvath. The Requesting State's arguments were advanced by Ms Bostock and Ms Burton. By way of update, I was informed that the Bogdan case on the judicial independence issue (see First Judgment at §3 and Second Judgment at §4) had been considered by the High Court, at a hearing the day before this hearing before me, with judgment reserved. I decided, in all the circumstances, to reserve my judgment and hand it down in writing. That course enabled the parties to follow up promptly some 'loose ends' which had been raised at the hearing. This hearing was a one-day hearing by Microsoft Teams. All Counsel were satisfied, as was I, that that mode of hearing involved no prejudice to the interests of their clients. I am satisfied that a remote hearing was justified and appropriate in the circumstances. The open justice principle was secured. The hearing, its start time and its mode of hearing were all published in the Court's cause list, as was an email address, usable by any member of the press or public who wished to observe the public hearing.

Materials

2. Several bundles were before the Court, including a Core Bundle of materials and an Authorities Bundle. I want to convey an appreciation of the breadth and depth of materials that were before me, referenced in the written and oral arguments. In addition to the materials which I will set out below, Popviciu v Romania [2021] EWHC 1584 (Admin) was cited at the hearing and the 'loose ends' led to the post-hearing citation of: (a) Committee of Ministers' Analysis Varga/Kovacs group (i) Meeting Notes, 6-7 June 2017 and (ii) Meeting Decision, 7 June 2017; and (b) the judgment of the Strasbourg Court (ECtHR) in Domjan v Hungary Application No. 5433/17 (23 November 2017). The Core Bundle included the following at tabs 12-38 and 41, as described in the bundle index:

Supervision of ECtHR Decisions. 12. Committee of Ministers' Analysis Varga/Kovacs group (14097/12 and 15707/10 – prisons etc): a. NGO (HHC) submissions, 2 February 2021 b. NGO (HHC) submissions, 26 January 2021 c. Meeting Notes, 11 March 2021 d. Meeting Decision, 11 March 2021 e. NGO (HHC) Submissions, 16 March 2021. 13. Material relating to X.Y. Group (43888/08 – Article 5 etc): a. Complete list of repetitive, unresolved cases in the X.Y. Group, including Suveges v Hungary (50255/12) b. Government "Action Report", 13 March 2019. 14. Committee of Ministers' Analysis Gazso group (No. 48322/12) (endemic delays): a. Decision, 9 June 2021 b. Meeting notes, 9 June 2021 c. Meeting notes, 2 December 2021 15. Baka (20261/12) (judicial independence etc): a. Decision, 1 October 2021 b. Meeting notes, 1 October 2021 16. NGO (HHC) Submissions to Committee of Ministers in Gubasci group (44686/07) (police ill treatment) a. 28 October 2021 (CPT recommendations not implemented) b. 15 October 2021 (Government plan does not address systemic deficiencies, including in monitoring) c. 2 December 2021 Decision of Committee of Ministers.

Council of Europe. 17. CPT Report, 17 March 2020 (visit 20-29 November 2018) 18. CPT Further Statement on COVID-19, 9 July 2020 19. CPT "Women in Prison", factsheet January 2018. 20. Venice Commission Opinion No. 1035/2021, Hungary, Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020, 2 July 2021 21. Venice Commission Opinion No. 1051/2021, Hungary, on the amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as adopted by the Hungarian parliament in December 2020, 18 October 2021.

European Parliament. 22. European Parliament Resolution on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary (2020/2513(RSP)), text adopted 16 January 2020 23. European Parliament Resolution on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), 12 September 2018 24. European Parliament Resolution on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament (2021/2780(RSP)), 8 July 2021 25. Motion for a European Parliament Resolution to wind up the debate … on the rule of law and consequences of the ECJ Ruling (2022/2535(RSP)), 2 March 2022.

United Nations. 26. UN Committee on the Elimination of Racial Discrimination, concluding observations, 6 June 2019 27. Compilation Report on Hungary of the Office of the High Commissioner for Human Rights (OHCHR) to the Working Group on the Universal Periodic Review, 25 August 2021 28. Summary of Hungarian Stakeholders' submissions to the Working Group on the Universal Periodic Review, 25 August 2021 Miscellaneous 29. HHC on discrimination against Roma people in the Hungarian Criminal Justice system, 2020 30. HHC & Amnesty International Timeline on undermining of the independence of the judiciary, 2012 – 2019 31. HHC Assessment of the activities and independence of the Ombudsman, September 2019 32. US State Department Report for 2019 on Hungary, 2020 33. Joint NGO submissions to European Commission, 11 March 2021 34. Commissioner for Fundamental Rights of Hungary (Ombudsman), Summary of Report No. AJB-874/2021 OPCAT National Preventive Mechanism Hungarian (following visit to Marianosztra strict / medium regime prison under covid-19 restrictions in February 2021) 35. Minority Rights Group Europe: Roma in Hungary: The challenges of discrimination, March 2021 36. HHC and NGO summary of paper on the Non-Execution of Domestic and International Court Judgments in Hungary, 2 December 2021 37. Freedom House (NGO), Freedom in the World Report 2021: Hungary "partly free") 38. HHC briefing paper regarding Hungary's emergency regimes introduced due to the Covid-19 pandemic, 1 January 2022 … 41. HHC Last Among Equals, report, 2014.

3. The Authorities Bundle included the following 58 items, again as described in the bundle index:

Fresh Material. 1. FK v Germany [2017] EWHC 2160 (Admin).

Section 2(2) Independence. 2. Lis, Lange and Chimielewski v Poland (No 1) [2018] EWHC 2848 (Admin) 3. Wozniak & Chablicz v Poland [2021] EWHC 2557 (Admin) 4. L& P (C-354/20 PPU and C-412/20 PPU, 17 December 2020) [2021] 2 C.M.L.R. 24.

Article 3 ECHR - General principles. 5. Targosinski v Poland [2011] EWHC 312 (Admin) 6. Palczynski v Poland [2011] EWHC 445 (Admin) 7. Agius v Malta [2011] EWHC 759 (Admin) 8. Krolik & Others v Poland [2013] 1 WLR 490 [2013] EWHC 2357 (Admin) 9. Elashmawy v Italy [2015] EWHC 28 (Admin) 10. Romania & Others v Zagrean & Others [2016] EWHC 2786 11. Mohammed v Portugal [2017] EWHC 3237 (Admin) 1 12. Jane No. 1 v Lithuania [2018] EWHC 1122 (Admin) 13. Soering v UK (1989) 11 EHRR 439 14. Mursic v Croatia (2017) 65 EHRR 1 15. Bivolaru and Moldovan v France (40324/16 and 12623/17), 25 March 2021 16. Aranyosi and Caldararu [2016] QB 921 17. ML (C-220/18 PPU) [2019] 1 WLR 1052.

Section 21 EA 2003 / Article 3 ECHR Hungary. 18. Nikolics v Hungary [2013] EWHC 2377 (Section 13(b) EA 2003) 19. GS v Hungary [2016] 4 W.L.R. 33 [2016] EWHC 64 (Admin) 20. Fuzesi v Budapest-Capital Regional Court, Hungary [2018] EWHC 1885 (Admin) 21. Szalai & Zabolotnyi v Hungary [2019] EWHC 934 (Admin) 22. Zabolotnyi v Hungary [2021] 1 WLR 2569 / Zabolotnyi v Hungary [2021] UKSC 1 23. Ekwoge v Hungary [2021] EWHC 3163 (Admin).

Article 3 ECtHR – Hungary. 24. Gubacsi v Hungary (Application no. 44686/07) 28 June 2011 Art 3- police treatment - incident 2016 25. Varga and Others v Hungary (Application nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13) 10 March 2015 (2015) 61 EHRR 30 26. M.F. v. Hungary (45855/12) 31 October 2017 Art 3- police treatment and investigation; procedural Art 14 violation due to failure to investigate possible racist anti-Roma motives – incident 2010 27. Csucs v Hungary (75260/17) 15 April 2021 Art 3 – police treatment and investigation – incident 2016.

Article 6 ECHR – General principles. 28. Dudko v Russian Federation [2010] EWHC 1125 (Admin) 29. Kaderli v Turkey [2022] EWHC 13 (Admin).

Article 5 ECtHR – Hungary. 30. X.Y. v Hungary (43888/08) 19 June 2013 Art 5.1, 5.3, 5.4– excessive pre-trial detention (2008) and "equality of arms" 31. Suveges v Hungary (50255/12) 5 January 2016 Art 5.3 / Art 6.1… 32. Bandur v Hungary (50130/12) 5 July 2016 Art 3 (periods over 3m2) [34-42] / Art 5.3 [60-68]; Art 5.4 [79-85]; Art 13: Criminal case 2012 33. Lakatos v Hungary (21786/15) 26 June 2018 Art 5.3 excessive pre-trial detention/ Art 6.1. Detention to first conviction 2011 – 2014. Court considered but did not make Pilot Judgment but referred to "general measures" being required [90] 34. Kerekes & 2 Others v Hungary (29343/20), 15 April 2021 Art. 5.3 - excessive pre-trial detention and Art. 5.4 - excessive length of judicial review of detention - Delays ranging 2018 to decision date, applying Lakatos 35. Kokeny v Hungary (36653/20), 10 June 2021 Art 5.3 – excessive pre-trial detention / Delay ranging 2018- 2019, applying Lakatos 36. Gujdi v Hungary (40052/20), 22 July 2021 Art 5.3 – excessive pre-trial detention / Delay ranging 2018 to decision date, applying Lakatos 37. Gabor & 14 Others v Hungary (43378/20), 30 September 2021 Art 5.3 – excessive pretrial detention /some Art 5.4: Delay ranging 2017 to decision date, applying Lakatos. 38. Milak & 10 Others v Hungary (2130/20), 30 September 2021 Art 5.3 – excessive pre-trial detention and some Art 5.4: Delay ranging 2017 to decision date, applying Lakatos. 39. Baranyi & 5 Others v Hungary (45540/20), 14 October 2021 Art 5.3 – excessive pre-trial detention and one Art 5.4: Delay ranging 2017 to decision date, applying Lakatos…

Article 5 & 6 ECtHR – UK. 40. Stafford v UK (46295/99) 28 May 2002 Art. 5 – murder licence release and recall 1989 - 1998 41. Ibrahim and Others v UK [GC] (50541/08, 50571/08, 50573/08) 13 September 2016: Case Summary Terrorism regime and Art. 6.1 and 6.3 right to legal assistance 42. Piper v UK (44547/10) 21 April 2015 Lengthy confiscation proceedings finishing 2009 43. Doherty v UK (76874/11) 18 February 2016 Art. 5.4 / life sentence recall 44. O'Neill and Lauchlan v UK (41516/10 and 75702/13) 28 June 2016 Article 6.1 excessive length of murder proceedings 1998 to 2010 45. V.C.L. and A.N. v UK (74603/12 and 77587/12) 16 February 2021: Case Summary Art. 4 / Art. 6.1 – failure to investigate trafficking.

Article 6 ECtHR – Hungary. 46. Barta and Drajko v Hungary (35729/12) 17 March 2014 Art 6.1 (criminal proceedings 2006 to 2012 overall [35 – 38] & Court invoked Art 46 calling for general measures [39-49] 47. Gazsó v Hungary (48322/12) 16 July 2015 Art 6.1 Pilot Judgment civil proceedings 48. Baka v Hungary (20261/12) 23 June 2016 (2017) 64 E.H.R.R. 6: Case Summary 49. Nemeth and 8 Others v Hungary (21869/14) 20 December 2018 Art. 6 - Right to a fair trial; Criminal proceedings; Art. 6-1 - Delays between 2006 – 2016, applying Barta & Drajko 50. Takacs & 7 Others (5877/18) 14 November 2019 Criminal proceedings; Art. 6-1 - Delays between 2013 – 2019, applying Barta & Drajko 51. Hadobas v Hungary (3686/20) 10 December 2020 Art. 6-1 criminal proceedings, delays between 2013 – 2019, applying Barta & Drajko 52. Szolosi v Hungary (46382/20) 22 July 2021 Art 6.1 and Art 13: Delay from 2014 to date of decision, applying Barta & Drajko 53. Csikos and 13 Others v Hungary (44001/20) 2 December 2021 Art. 5 - Right to liberty and security; Art. 5-3 - Length of pre-trial detention; Art. 5-4 - Speediness of review; Art. 5-4 - Review of lawfulness of detention: Delay ranging 2016 to decision date, applying Lakatos 54. Klapoff and 4 Others (4431/21) 2 December 2021 … Criminal proceedings Art. 6-1 - Reasonable time; Art. 13+6-1 - Right to an effective remedy: Delay ranging 2012 to decision date, applying Barta & Drajko 55. Corneanu & 9 Others v Hungary (45021/20) 13 January 2022 Art. 5-3 - Length of pre-trial detention; Art. 5-4 - Speediness of review. Criminal proceedings; Art. 6-1 - Reasonable time; Art. 13 Effective Remedy: Delay ranging 2017 to decision date, applying Lakatos and Barta & Drajko. 56. Hadobas & 4 Others (44841/20) 24 February 2022 Art. 6.1 and Art. 13. 5 claimants in proceedings from 2013 to date of decision (duration ranging from 3years 11m to 10years 6 months and 4 of 5 cases still pending): Delay ranging 2013 to decision date, applying Barta & Drajko 57. Lakatos & 9 Others (1561/21) 24 February 2022 Art. 5.3 pre-trial detention and Art 5.4. 10 claimants in proceedings between 2018 and July 2021: Delays ranging 2016 to decision date, applying Lakatos 58. Besirovic & 9 Others (32917/20) 10 February 2022 Art 5.3 pre-trial detention had been unreasonably long and Art 5.4. Annex to case shows 10 claimants involved in proceedings between 2016 to date of decision and two cases still pending), applying Lakatos.

Grounds of Appeal

4. The grounds of appeal, advanced by Ms Westcott and Ms Nice as "reasonably arguable", encompass the four points which were identified in previous judgments. As crystallised for this hearing, they came to this. (1) First, it is reasonably arguable that clear and cogent evidence exists of a real risk of flagrant denial of Article 5 and/or Article 6 rights, arising out of endemic delays in the Hungarian justice system. (2) Secondly, it is reasonably arguable that an Article 3 real risk arises in relation to prison conditions, notwithstanding prison assurances which guarantee a minimum floor space of at least 3 m^2 ("the Prison Assurances"). This second ground arises out of one or both of the following contentions. (i) The scope of the Prison Assurances is inadequate in the light of the evidence relating to the risk of prison conditions other than overcrowding and personal floorspace. (ii) The content of the Prison Assurances is inadequate given the evidence relating to the shortcomings in monitoring by the General Ombudsman on which monitoring they rely. (3) Thirdly, although not relied on as a freestanding ground of appeal, the arguments in (1) and/or (2) are materially supported, to the extent of demonstrating reasonable arguability, by the fact that the Requested Persons are persons of Roma ethnic origin, in light of the evidence relating to the discriminatory ill-treatment of such persons in Hungary.

5. In analysing the arguability of those Grounds of Appeal, I have considered the written and oral submissions that were made, and the materials to which my attention was invited in those submissions. In order sufficiently to explain the conclusions at which I have arrived, and the reasons why I have arrived at them, I am going to focus on the materials which I saw as being of central relevance, or which have particular illustrative significance.

Articles 5 and 6

6. A set of arguments was advanced by the Requested Persons in support of the contention that it is reasonably arguable that clear and cogent evidence exists of a real risk of flagrant denial of Article 5 and/or Article 6 rights, arising out of endemic delays in the Hungarian justice system. The essential focus here is on the passage of time viewed through two distinct prisms. The first prism is the Article 6 ECHR right to a criminal trial within a reasonable time. The second prism is the Article 5 ECHR protection against excessive pre-trial detention. The starting point is the need to recognise the following: that there is an operative presumption of ECHR compliance; that "clear and cogent evidence" would be needed to displace it; and that a "flagrant breach" test applies in extradition cases when considering Article 6 or Article 5 breaches of which the Requested Persons are said to face a real risk. All of this was common ground. The Judge set all of this out, by reference to authority, in a way which is beyond criticism. My attention was invited to Agius v Malta [2011] EWHC 759 (Admin) at §§18-19.

7. Key features in this first set of arguments, as I saw it, are the following:

   i) There is the European Parliament Resolution (12 September 2018) on a proposal calling on the EU Council to determine, pursuant to Article 7(1) of the Treaty on European Union ("TEU") the existence of a clear risk of a serious breach by Hungary of the values on which the EU is founded. This is referable to TEU Article 2 which describes the foundational values of the EU as "respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". In the context of Article 3, a Reasoned Proposal of this kind is treated as sufficient for the Aranyosi "Stage 1" general assessment of whether there is a real risk of inhuman or degrading treatment, so as to trigger the Aranyosi "Stage 2" of an "assessment, specific and precise, whether there are substantial grounds to believe that the individual concerned will be exposed to that risk": see Wozniak at §§42 to 44. In the same way, a Reasoned Proposal should stand as "clear and cogent evidence" calling for a similar assessment and capable of rebutting the operative presumption for the purposes of Articles 5 and 6 and the "flagrant breach" test.

   ii) Then there is the "Pilot Judgment" of the Strasbourg Court in the context of Article 6 and the Hungarian justice system: Gazso. That Pilot Judgment has led to the supervision of the Committee of Ministers' Deputies of the cases in the "Gazso Group". There is a link between this and the Reasoned Proposal point, and the Annex to the Resolution of the EU Parliament (12 September 2018) refers at paragraph 16 to the Gazso Pilot Judgment.

   iii) Then there are the decisions of the Strasbourg Court in a series of Article 6 and Article 5 cases. These judgments stand as relevant sources for the purposes of constituting information that is "objective, reliable, specific and properly updated", in the same way as is seen in the context of Article 3 in Aranyosi at §89. These judgments also stand as features which can "aggregate" for the purposes of constituting evidence of "flagrant" denial of justice: see Popviciu at §§144, 146.

iv) In relation to Article 6, the cases include Barta (17 December 2013), a criminal Article 6 case of violation of the right to a fair trial within a reasonable time, where the Court (at §42) said: that there were approximately 100 cases currently pending before the Strasbourg Court against Hungary concerning the length of criminal proceedings; that the Court had so far found Article 6 violations concerning the length of criminal proceedings in approximately 60 cases; that the violation of the right to trial within a reasonable time was not an "isolated" instance "but rather a systemic problem that has resulted from inadequate legislation and inefficiency in the administration of justice". In the recent case of Hadobas (24 February 2022), the Strasbourg Court found similar violations (see §§8-10) of Article 6 violations in 5 sets of criminal proceedings, including "pending" cases (see the Appendix to the judgment) in which the criminal proceedings had started in April 2011, June 2016, September 2017 and February 2018.

v) So far as Article 5 and pre-trial detention are concerned, there are an array of Strasbourg judgments including Lakatos (26 June 2018) which concerned the entitlement to trial within a reasonable time for a detained person under Article 5(3) (see §41) and where an Article 5 violation was found from the absence of relevant and sufficient reasons to extend the applicant's detention pending trial for 3 years and 8 months (see §69). That case involved submissions, which the Strasbourg Court recorded, as to the "systematic problem in Hungary as regards the extension of pre-trial detention" (see §77). The position in relation to Article 5 is strikingly illustrated by the Appendices to the Strasbourg Court's judgments in cases such as Gabor and Milak (both decided on 30 September 2021), in which similar violations of Article 5 were found on the basis of excessive pre-trial detention (Gabor §§8-10, Milak §§8-10), in a series of 15 cases (Gabor Appendix) including pending cases in which the pre-trial detention had commenced in September 2018, January 2019, March 2019, April 2019 and May 2019, and a further series of 11 cases (Milak Appendix) including a pending case in which pre-trial detention had commenced in December 2018.

vi) Then there is the Expert Report. In it, Dr Csire emphasised the significance of the complexity of a case, the number of defendants and the number of charges, in relation to the length of time which Hungarian justice can be expected to take. That evidence needs to be seen alongside the profile and sensitivity of the prosecution with which these cases are concerned.

8. Alongside these key features of the argument on Articles 5 and 6 there are the points made about the discriminatory ill-treatment of persons of Roma ethnic origin. Key points in relation to that topic included the following. (1) The Annex to the Resolution of the EU Parliament (12 September 2018) set out specific concerns relating to the issues of the right to equal treatment and the rights of persons belonging to minorities including Roma, reflecting a clear risk of a serious breach by Hungary of EU foundational values regarding respect for their human dignity and human rights. (2) The Concluding Observations of the Committee on the Elimination of Racial Discrimination (6 June 2019) describe the "persistence of discrimination against Roma' (see §20) and the absence of detailed information on training programs for "judges, prosecutors, lawyers and state and public officials" on the prevention of racial discrimination (see §26). (3) A Report of the Office of the United Nations High

Commissioner for Human Rights (25 August 2021) identifies the "cross-cutting issues" relating to equality and non-discrimination including in particular in the context of Roma (see §§9 and 10). (4) A Report of the HHC (Hungarian Helsinki Committee) in 2020 highlights "discrimination against Roma people in the Hungarian criminal justice system". All of these and the other materials in the case relevant to this issue need to be seen in the context of the recognised absence of information and data, and the serious concerns arising from the lack of visibility.

9. In my judgment, it is not reasonably arguable that clear and cogent evidence exists of a real risk of a flagrant denial of Article 5 or Article 6 rights faced by the Requested Persons. In my judgment, the materials relied on – individually and in combination, and including the materials relating to the concerns as to the discriminatory ill-treatment of Roma people – are not, even arguably, capable of crossing the relevant threshold for the purposes of rendering extradition incompatible with Article 5 or Article 6. The key points, as I see it, are these:

    i) Starting with the EU Parliament's Resolution (12 September 2018), it is important that the Article 2 TEU "foundational values" include "respect for human rights". However, against that important backcloth, the EU Parliament's Reasoned Proposal identified a list of 12 issues as constituting its concerns. These included concerns relating to human rights protected in the ECHR: for example, freedom of expression; freedom of association; freedom of religion; and the right to equal treatment. However, neither Article 5 nor Article 6 rights featured in the list. The European Parliament did not therefore identify, as it did in relation to the issues which it listed, "a systemic threat" to the foundational values in TEU Article 2 constituting "a clear risk of serious breach". In the Annex to the Resolution, where detailed reasoning was set out, a passage related to the Gazso Pilot Judgment. But nowhere in the Annex was there a description of delays in criminal trials or excessive pre-trial detention. It is right that the passages in the Annex that relate to rights of persons belonging to minorities including Roma describe the discriminatory ill-treatment faced by Roma. But nowhere in those passages is there any identification of discriminatory ill-treatment so far as concerns criminal trials being delayed in the case of individuals of Roma ethnic origin or pre-trial detention being visited on or being excessive in the case of such individuals.

    ii) The Pilot Judgment in Gazso, and the Gazso group, are initiatives of the Strasbourg Court concerned with delays, but they are concerned with Hungarian civil claims. It is reflected in the description at paragraph 16 of the annex to the EU Parliament's Reasoned Proposal which refers to violations having been found arising out of Hungary's "recurrent failure to ensure the proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to claim redress for excessively long civil proceedings at a domestic level" before going on to refer to the new code of civil procedure which had been adopted in 2016 and information from Hungary about a new law creating an effective remedy for prolonged procedures due to be adopted in October 2018.

    iii) In the Barta case in December 2013 the Strasbourg Court considered the frequently found violations of Article 6 in relation to the excessive length of criminal proceedings (see §§37 and 39-49). The Court emphasised the

importance of mechanisms for effective redress of violations if they continued to occur and stated that Hungary should take all appropriate steps to prevent future violations of the right to a trial within a reasonable time: see Barta §§44 and 49. Then in Lakatos in June 2018 the Strasbourg Court was urged to adopt a Pilot Judgment in relation to Article 5(3) and what was said to be the systematic problem in Hungary as regards excessive pre-trial detention, but the Court declined to do so: §§73 to 91. The Court said it may "reassess" the "need for a pilot judgment procedure" (§91). It is significant in the context of all of this that no Pilot Judgment has been given by the Strasbourg court in the context of delays in criminal trials, either from the perspective of Article 6 or Article 5(3).

iv) The Requested Persons relied on Popoviciu §§144 and 146 as supporting that proposition that an aggregate series of Strasbourg cases finding individual violations could cumulatively support a case of "flagrant" breach. That was said to arise out of the reference to "flagrant denial of justice" at §144 of that judgment. In my judgment, that argument is unsound. In principle, the function of the "flagrant breach" test in the context of extradition is to identify a particularly serious breach, of which there is a risk in the case of the individual or relevant class of persons affected. I accept that the incidence of a large number of cases involving findings of violations will be highly relevant to the prevalence of the risk that a similar violation will be faced. But there remains a distinction between a violation (breach) and a flagrant violation (flagrant breach). A number of similar cases of similar breach do not, cumulatively, stand as evidence of a more serious (flagrant) future breach. The point in Popoviciu was different. It was whether a series of deficiencies in a trial faced by a requested person could be aggregated so that overall they amounted to "a flagrant denial of justice". That was about the cumulative effect of features of lack of due process applicable to the individual whose extradition was being sought. The Court was not saying that a series of cases in which Article 6 had been breached in the same or a similar way could be treated 'cumulatively' so as to characterise as "flagrant" the same or a similar breach when said to be faced by an individual requested person.

v) It is relevant that the Strasbourg court in Lakatos was by June 2018 acknowledging that Hungary had "already taken steps to remedy the problems related to pre-trial detention", as to which the Strasbourg court said it "welcomes the efforts made by the Hungarian authorities aimed at bringing Hungary legislation into compliance with the Convention requirements" (see §88). That was material to the conclusion that a pilot judgment procedure was not necessary (see §89). Also relevant, as the Judge recognised in his judgment, is that a new Criminal Procedure Code came into force in Hungary in 2018. That meant that the legal framework for the prosecution of offences had relevantly changed, given the provision in the code whereby criminal trials could be dealt with more promptly.

vi) The Expert Evidence was, and remains, significant. It is quite right that the expert report referred to Dr Csire's professional experience as to the new 2018 Criminal Procedure Code. Dr Csire expressed his concerns as to its adequacy in dealing with "big cases of complexity, with numerous defendants on numerous

charges". But that was the background for the opinion that he went on to give in the Expert Report in relation to his expectations for the passage of time in the present case. His evidence in the Expert Report was that if the case went to trial, he would expect "a lengthy procedure, well over one year". He gave oral evidence at the hearing before the Judge. Questions were specifically asked relating to the present case, multiple defendants and the joinder of the relevant cases. The Judge described the expert evidence which Dr Csire gave:

> ***Dr Csire's estimate of the trial length on the assumption that the RP's plead not guilty is "well over 1 year." If all cases were joined, he suspected they would finish "between 1 and 3 years" and if they were not, "much shorter" albeit the Hungarian justice system is experiencing the same delays as that of the UK due to the pandemic.***

vii) Focusing on the Expert Evidence which he had heard, in the context of having earlier described the Gazso Pilot Judgment and its supervision, the new laws passed by Hungary in December 2018 to address the issues of delay and compensation in the context of criminal proceedings, the pre-trial detention Strasbourg case-law and the new Criminal Procedure Code, the Judge said this:

> ***Is that estimated length of proceedings such that I can conclude that the right to determination of a trial within a reasonable time (per Article 5) will be denied? No. Is there material before me which indicates that there is no periodic right of review of detention? No. Is the material before me such that I can conclude that there will be a 'flagrant or complete denial of the [Article 6] right to a fair trial?' The Council of Ministers of the EU is not of that view. Nor am I. The ground of challenge by both RP's based on delay contrary to Article 5 ECHR fails.***

In relation to discriminatory ill-treatment of individuals of Roma ethnic origin the Judge said this:

> ***I am concerned at the apparent societal discrimination against Roma that the materials before me disclose, but I cannot conclude that Hungary's judicial system will operate contrary to each [Requested Person's] Article 6 rights to a fair trial. It is not Dr Csire's evidence that the trial of a Roma person in a Hungarian court would represent a flagrant denial of justice. The ministers of the Council of Europe have not reached that conclusion. Neither do I. I dismiss this ground of challenge.***

10. In the light of all the materials and, in particular, the key features to which I have referred, it is not, in my judgment, reasonably arguable that the outcome at which the Judge arrived at in relation to Articles 5 and/or 6 was the wrong one, including when the putative fresh evidence is considered and including when the materials relating to the discriminatory ill-treatment of Roma are considered. I refuse permission to appeal on these issues.

Article 3

11. A further set of arguments was advanced by the Requested Persons in support of the contention that it is reasonably arguable that the Requested Persons face an Article 3 real risk in relation to prison conditions, notwithstanding prison assurances which guarantee a minimum floor space of at least $3m^2$: (a) because the scope of the prison assurances is inadequate in the light of evidence relating to other prison conditions (beyond overcrowding and floorspace); and/or (b) because the contents of the prison assurances are inadequate in the light of evidence relating to the General Ombudsman (on whom they rely for monitoring). In considering those arguments I have, again, had

regard to the implications of the materials relating to discriminatory ill-treatment of individuals of Roma ethnic origin.

12. In approaching the submissions being made regarding inadequacy, in scope or content, of prison assurances in Hungarian extradition cases, it makes sense to start by identifying this sequence of domestic cases which relate to Article 3, Hungarian prison conditions and assurances:

    i) In GS (21 January 2016) the Divisional Court held that personal space was the only aspect of Hungarian prison conditions calling for an assurance so as to ensure that extradition was compatible with Article 3. The Court identified personal space as having been the focus of the Strasbourg Court's Article 3 Pilot Judgment in Varga (10 March 2015). The Court concluded that none of the materials which it had seen supported the proposition that there were substantial grounds for believing that there was a real risk of treatment contrary to Article 3, on account of other prison conditions, faced by a requested person detained with a minimum 3m² of personal space (§14). On that basis, floorspace assurances, compliance with which would be monitored by the General Ombudsman as the National Preventative Mechanism for the purposes of the Optional Protocol to the UN Convention against Torture (see §15), were necessary but also sufficient. The monitoring role of the General Ombudsman was specifically emphasised by the Court (§31).

    ii) In Fuzesi (16 July 2018) the Divisional Court again held that assurances guaranteeing 3m² of personal space, compliance with which would be monitored by the General Ombudsman (see §3), were sufficient and that it was not necessary (see §38) for Article 3 purposes that a Hungarian prison assurance should "specify the prison at which [the requested person] will be detained if extradited" (see §8). The Court referred (at §30) to the "Othman criteria" regarding legally adequate assurances (from Othman v United Kingdom (2012) 55 EHHR 1 at §189), which criteria include the question of appropriate monitoring mechanisms. The Court specifically had regard to the following: the consideration by the Committee of Ministers' Deputies of the Varga Pilot Judgment on 6 June 2017 (§§18-21) and again in March 2018 (§23); the consideration of the position in November 2017 by the Strasbourg court in Domjan (§22), and the HHC report of March 2018 (§25) including the HHC's observations in relation to matters such as the resources, inspections and speed of publication of reports by the General Ombudsman (§25). The Court concluded that there had been "no material factual change since" GS (§37), having made specific reference to the requesting state's submission about the General Ombudsman continuing to constitute an effective, independent monitoring mechanism (§36(viii)).

    iii) In Szalai (16 April 2019) the Divisional Court revisited the question of Hungarian prison assurances. The outcome was that they remained legally sufficient, as before. The Court recognised the "sharper focus" given to the question of prison conditions in Hungary, by the Strasbourg court's analysis in Mursic, including as to the 'grey area' where personal space between 3m² and 4m² could result in an Article 3 violation when in 'combination' with other aspects of inappropriate physical conditions of detention, including: access to outdoor exercise, natural light or air; availability of ventilation; adequacy of

room temperature; access to toilets and compliance with basic sanitary and hygienic requirements (see §9). The Court treated the 3m² prison assurances as still being legally adequate. The principal focus of the case was an issue regarding whether evidence of previous breaches of assurances in other cases (including non-UK cases) was evidence which had materially undermined the reliance that could be placed on such assurances.

iv) In Zabolotnyi (30 April 2021) the Supreme Court decided an appeal from one of the cases dealt with by the Divisional Court in Szalai. The outcome was that Hungarian prison assurances remained legally sufficient, as before. The Supreme Court decided that the Divisional Court in Szalai ought to have permitted reliance on evidence of a breach of an assurance in a non-UK case but reasoned that, if admitted, the evidence would not have made a material difference to the outcome (§62).

13. The essence of the argument advanced on behalf of the Requested Persons – as I saw it – was as follows. The assurances which have been accepted as sufficient in previous Hungarian extradition cases – with a guarantee of personal space of 3m² and monitoring by the General Ombudsman – are, on the basis of the materials before this Court, arguably inadequate.

i) So far as concerns other conditions beyond personal space, there are the following. There is the important 'combination' feature in the 'grey area' between 3m² and 4m², emphasised in Mursic. An example of a 'combination' between considerations of personal space and other exacerbating conditions, such as conditions relating to ventilation and outdoor exercise, is seen in Bandur v Hungary (5 July 2016) App. No. 50130/12 at §§23, 34 and 39-42. GS is the only case in the sequence which addressed, head-on, the question of other prison conditions beyond personal space. But GS pre-dated Mursic. Alongside Mursic and Bandur, there are these important features: the ongoing consideration of the position by the Committee of Ministers' Deputies in light of the Varga Pilot Judgment; the March 2020 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") arising out of a visit to Hungary between 20 and 29 November 2018; the internationally recognised implications of the pandemic; the impact of the Hungarian compensation scheme, necessitated by the Varga Pilot Judgment, in stemming what would otherwise have been a very substantial flow of Article 3 prison conditions cases coming before the Strasbourg Court; the recent restrictive reform in that compensation scheme so as now to limit claims based on other prison conditions to those where there has been personal floorspace below 3m². These and the other materials in the case – at least reasonably arguably – support the conclusion that there is now an Article 3 risk which requires an assurance addressing conditions beyond guaranteeing personal space of 3m².

ii) So far as concerns monitoring by the General Ombudsman, there are the following. There is the HHC report regarding the General Ombudsman dated September 2019, which describes concerns including as to repeated failure to address (or address adequately) pressing human rights issues including those that are politically sensitive and high profile, and a reluctance to investigate detention-related issues brought to his attention by NGOs. There is the Venice Commission opinion (18 October 2021) which raises concerns, including

recording that the Sub-committee on Accreditation of the Global Alliance of National Human Rights Institutions had (in June 2021) recommended that the General Ombudsman be "downgraded" to "B status" (connoting "partial" compliance only with "the Paris Principles"). There is the recording in these materials of the merger of the previous Equal Treatment Authority and the General Ombudsman as having given rise to serious concerns as to resources and effectiveness of the General Ombudsman. And there is the Expert Evidence, which describes concerns as to the adequacy of the General Ombudsman's monitoring activity. These and the other materials in the case – at least reasonably arguably – support the conclusion that there is now an Article 3 risk arising out of the inadequacy as a monitoring body of the General Ombudsman.

iii) All of these features need to be seen individually and in combination, seen in the context of the troubling implications of a general lack of information and data, and seen in the context of the materials relating to discriminatory ill-treatment of individuals of Roma ethnic origin.

14. In my judgment, it is not reasonably arguable – having regard to all the materials – that there is an Article 3 real risk of being subjected to prison conditions, which the Hungarian prison assurances guaranteeing a minimum floor space of at least $3m^2$, monitored by the General Ombudsman, have now become inadequate to address. The key points, as I see it, are these:

i) The starting point is that the 'other conditions of detention' were the direct subject of the Divisional Court's assessment in January 2016 in the GS case, and that the nature of the Hungarian assurances identified in that case as necessary but also sufficient have endured the assessment in Fuzesi (16 July 2018), Szalai (16 April 2019) and Zabolotnyi (30 April 2021).

ii) It is significant that in March 2020 there was a Report by the CPT arising out of a November 2018 visit. And it is important to consider with care what that CPT 2020 Report says, and does not say. That Report recorded that the co-operation which the visiting delegation received throughout the visit had been excellent; that a number of previous CPT recommendations had been taken into account; and that the Hungarian authorities appeared to have taken action to address the long-standing issue of prison overcrowding. I was not shown any passage in the Report which expressed a view which could stand as evidence to support a finding of a general risk of Article 3 ill-treatment based on other prison conditions. It is, in my judgment, highly material that the 2020 CPT Report does not support the contention that there are prison cell conditions violating Article 3 standards.

iii) The particular passages in the 2020 CPT Report, on which reliance was placed on behalf of the Requested Persons, were these. Reliance was placed on passages in the CPT Report relating to an outdoor exercise yard in centralised police holding facilities in which remand prisoners were typically spending 23 hours a day locked up (see the Report at §34). That was in the context of an observation that, at those centralised police holding facilities, as had been the case during previous visits, material conditions of detention were generally satisfactory; the cells were in a reasonable state of repair and clean; they were sufficient in size for their intended occupancy; they were equipped was sleeping

platforms shelves and bedding; they were adequately heated and ventilated and had suitable artificial lighting; the delegation had received no complaints about access to the sanitary facilities; and three meals were served daily (see §33). Reliance was placed on observations, again in the context of centralised police holding facilities, of persons being placed in police holding facilities and then taken to court or other premises while "exposed to public view" including photographers and TV journalists with their hands cuffed and attached to a lead which was held by escorting police officers, which was described as "clearly demeaning" and something which could be considered as "degrading" (see §39). Finally reference was made by the Requested Persons to a passage in the CPT Report relating to "manifestly deficient" outdoor exercise yards in special regime units housing prisoners serving lengthy sentences (see §§82 and 99), where criticism is made of the dimensions of the exercise yard at two such special regime units. In my judgment these observations do not, even arguably, stand as evidence capable of crossing the threshold of an Article 3 risk of ill-treatment barring extradition absent other prison assurances.

iv) The meeting (11 March 2021) of the Committee of Ministers' Deputies, supervising the Varga Pilot Judgment, refers to "other detention related violations" and "aspects other than overcrowding". But that March 2021 decision has a number of striking features. The first is that the reference (at §2) to "other unsuitable conditions of detention" is a reference to the judgment in the Domjan case §30 (23 November 2017) and to the preventive and compensatory remedies introduced by the Hungarian authorities in 2017 which had been welcomed by the Committee of Ministers. The reference to addressing "aspects other than overcrowding" (§5) is a reference to the Hungarian authorities taking the opportunities presented by the eradication of overcrowding. A reference to outstanding issues related to "other" violations which had been found (§8) concerns the treatment of disabled detainees, special security regimes and visits, and a lack of effective remedies "in these respects". All of this was said in a context in which the number of pre-trial detentions had started to rise again recently (Minutes of the meeting at p.2). A description of "material conditions of detention" was a reference to "a substantial number of inmates [who] still appear to be held in inadequate material conditions, notably in cells infected with insects, having no proper ventilation or sufficient natural light, or equipped with on partition toilets". That was a reference to what had been said in communications in 2020 and 2021 written by the HHC. These March 2021 materials – like the 2020 CPT Report – nowhere express or evidence the view that there are general conditions of detention which involve a violation of Article 3 standards. The March 2021 materials also have to be seen against the backdrop of the earlier similar materials in which the Varga Pilot Judgment was considered and supervised by the Committee of Ministers' Deputies. For example, the reference to what the HHC was saying in 2020 had been included in the materials for the supervision meeting of 3 September 2020.

v) The equivalent June 2017 materials the Committee of Ministers' Deputies had specifically referred to the Mursic point ("material conditions of detention where the available living space is between 3 and 4m² per inmate"). They had specifically referred to Varga and the preventative and compensatory remedy regarding poor material conditions of detention, giving a description of the

preventive and compensatory measures which it entered into force in Hungary in January 2017. They had discussed "overcrowding and material conditions of detention".

vi) As has been seen, the Divisional Court considered in Fuzesi (16 July 2018) whether an assurance ought to specify a prison, and not simply specify the minimum guaranteed 3m² floor conditions. That was in the context of an argument that there were only two named prisons "which reliably guarantee compliance with article 3". By that time the Strasbourg Court had decided Bandur, in which ventilation and access to outdoor exercise had 'combined' with lack of personal space to constitute a violation of article 3. Moreover, the Divisional Court specifically considered the June 2017 supervising materials of the Committee of Ministers' Deputies (see Fuzesi at §§18 to 21), including the references made to the "poor material conditions of detention" which were the subject of the new preventative and compensatory remedy (§21), and the equivalent March 2018 supervision materials (§23). The Court (at §22) also specifically considered Domjan, §34 of which is cited in the March 2021 materials. Domjan was a case in which the Strasbourg Court was considering a compensatory remedy under which an applicant could allege "not only that he or she had not been provided with the living space provided for by law", but also other conditions involving "torture or cruel, inhuman or degrading treatment" (Domjan §24). The Court (at §24) also considered an HHC report (March 2018). Any general concern relating to other prison conditions was and would have been directly relevant to the question in Fuzesi of whether – in addition to personal floorspace guarantees – named prisons needed to be identified within a Hungarian prison assurance, as a necessary condition to the Court being satisfied that there was a sufficient Article 3 guarantee. It is clear that the Divisional Court did not, in July 2018, overlook evidence arising from the Committee of Ministers' supervision materials, or from the HHC, or from Domjan, or relating to the subject matter of the remedies discussed in Domjan.

vii) It is equally clear that the Divisional Court did not, in deciding Szalai in April 2019, overlook evidence of risks relating to other prison conditions. In that case, indeed, the co-chair of the HHC was giving evidence to that Court (see Szalai at §30) and had submitted reports dated 13 October 2018 and 14 November 2018 about which the Divisional Court said: "these reports to some degree deal with other conditions than the amount of personal space afforded" but "the thrust of the evidence is to suggest that assurances have not been observed in relation to personal space". Furthermore, the fact that the HHC was reporting, in 2020 and again in 2021, (as recorded in the Committee of Ministers' Deputies supervision materials from September 2020 and March 2021) that substantial number of inmates were "still" held in inadequate material conditions is clearly indicative of the continuity in the sorts of points had been raised as the "poor material conditions of detention" (June 2017), as the "other inadequate conditions of detention" (Domjan §10), and as the "other unsuitable conditions of detention" (Domjan §30: cited by the Committee of Ministers' Deputies in March 2021).

viii) What the materials recognise is that there were and still are issues relating to prison conditions, both as regards conditions within cells and as regards arrangements such as exercise facilities, which give rise to concerns. These have

been identified and reported. They were and are reflected in the relevant materials. All of that was a feature of Varga itself. It was directly in play as a feature of the analysis in GS. It remained as a known feature of the factual picture in Fuzesi and Szalai. What the concerns of that kind, and the materials expressing them, have at no stage done – and in my judgment beyond argument still do not do – is to provide a basis for the Court to conclude that what is now required is an assurance which goes beyond a guarantee of 3m² and now requires further specificity in the context of other prison conditions, in order for extradition to Hungary to be compatible with Article 3.

ix) So far as the General Ombudsman is concerned, I have already indicated that this too has been a clear feature of the line of the relevant cases. The General Ombudsman, which stands as the National Preventative Mechanism for the purposes of the Optional Protocol to the UN Convention against Torture (GS §15), has been expressly interwoven into the legally adequate assurances given in Hungarian cases. Points relating to effectiveness, such as resources, and the incidence of visits, are not new. For example, in Fuzesi (at §25) the Divisional Court explained that a passage in the HHC report of March 2018, "to which we should specifically draw attention", had "considered the office of" the General Ombudsman and had "commented that the resources available to the [General Ombudsman] were relatively small; that he had a large number of facilities that he had to inspect under his mandate; … that he could only in fact inspect a small number of those in each year… [and] that the publication of the arms was reports were slow". Those points are very much with the grain of the points made about the General Ombudsman, relied on by the Requested Persons, in this case. The Divisional Court in Fuzesi found no basis for now rejecting the General Ombudsman as an effective independent mechanism as identified in GS and, having recorded that specific point (§36(viii)), expressed the general conclusion that there had been "no material factual change" since GS to "undermine" the reliance on the assurances recognised as necessary and sufficient in GS.

x) In my judgment, beyond argument, the points arising from the HHC September 2019 Report on the General Ombudsman involve similar concerns to those which were considered in Fuzesi. Indeed, the 2019 Report explains that it is presented as an analysis of the General Ombudsman "between 2014 and 2019". It is also relevant that this report contains a section on the General Ombudsman's performance as the National Preventive Mechanism (or "NPM") and the rights of detainees (see §4.5). The description that follows makes no reference to any failure so far as General Ombudsman's monitoring of assurances is concerned. Moreover, given the clear focus in the domestic case-law after Fuzesi (decided in July 2018) on the question of breaches of assurances, and given that the relevant assurances had been straight guarantees of 3m² minimum space, it would be very striking indeed if there were evidence that the General Ombudsman were failing to perform the monitoring role for the purposes of such assurances, and this had escaped the attention of those solicitors, barristers and judges dealing with the Article 3 compatibility of extradition to Hungary on assurances in Szalai (April 2019) and in Zabolotnyi (April 2021).

xi) So far as the Venice Commission's October 2021 report is concerned, it records a recommendation of a downgrading of the General Ombudsman to "partial compliance" with "the Paris principles", giving 12 months to June 2022 for the General Ombudsman to "provide the documentary evidence necessary to establish continued conformity with the Paris principles" (§30). I was shown no evidence or material that suggests a shortcoming relating to the function of monitoring floorspace assurances given in extradition cases.

xii) Finally, so far as concerns the materials relating to discriminatory ill-treatment of individuals of Roma ethnic origin, I was shown no material that supports the conclusion – even arguably – that there is a real risk of breach of Article 3 standards in relation to prison conditions, or a real risk of the General Ombudsman failing to monitor the minimum personal space assurances, in the case of a requested person who is of Roma ethnic origin, arising out of this feature of the case.

15. For the purposes of the analysis of arguability, I have assumed in their favour, as the Requested Persons submitted, that the explanation for the absence of any further Strasbourg Article 3 'other prison conditions' breach cases is attributable to the fact that the Hungarian compensatory measures, in response to the Varga Pilot Judgment, had allowed for redress to be sought for such breaches, even where a detainee in Hungarian detention had been afforded 3m² personal space. That would mean that the scope of redress has, in this respect, been narrowed. There was an ambiguity about that: the Committee of Ministers' Deputies (September 2020) materials referred to redress being excluded in respect of other prison conditions, if 3m² personal space was provided; and an HHC submission (26 January 2021) speaks of a new regulation which "upholds" this "rule". I drew no adverse inference from the absence of further Strasbourg Article 3 breach cases. What remains clear that the principal focus has been on overcrowding, as it was in Varga and also in the subsequent case of Bandur, which was the point made about Varga by the Divisional Court in GS, and that the topic of other prison conditions has not been overlooked in the cases or the materials.

16. The Judge concluded as follows in relation to Article 3 and the prison assurances:

> ***It is wholly apparent that there is insufficient evidence to rebut the relevant presumption on any issue within the Hungarian prison estate aside from overcrowding – which is adequately alleviated through the provision of the assurances… No bar under Article 3 arises …***

In my judgment, it is not reasonably arguable that the Judge's conclusion was wrong. Having had regard to all the material and all the submissions, there is no reasonably arguable Article 3 ground of appeal and, beyond argument, the prison assurances of the nature and design and content previously identified as legally sufficient in Hungarian extradition cases are legally sufficient in the present cases.

Conclusion

17. For the reasons which I have given, permission to appeal on the grounds that have been advanced at this hearing is refused. Since the putative fresh evidence is incapable of being decisive, I formally refuse permission to rely on it.