Neutral Citation Number: [2018] EWHC 3467 (Admin)

Case No: CO/3260/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
In the matter of an appeal against extradition
pursuant to s.26 of the Extradition Act 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 December 2018

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

- -

Between :

SENAD TERZIC	**Appellant**
- and -	
COUNTY STATE ATTORNEY'S OFFICE IN ZAGREB, CROATIA	**Respondent**

- -
- -

Ben Cooper (instructed by **Shaw Graham Kersh**) for the **Appellant**
Hannah Hinton (instructed by **CPS**) for the **Respondent**

Hearing date: 06 December 2018

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Judgment Approved

Mr Justice Supperstone :

Introduction

1. The Appellant appeals against the decision of District Judge Zani ("the judge") made on 14 August 2018 to order his extradition to Croatia pursuant to a European Arrest Warrant ("EAW") issued on 5 June 2017 by the County State Attorney's Office in Zagreb, Croatia, the Respondent, and certified by the National Crime Agency ("NCA") on 9 November 2017.

2. The Appellant's extradition is sought for him to be prosecuted in respect of the allegations of dishonesty set out in the EAW. It is alleged that he abused his position as director of Askel Zagreb Ltd ("Askel Zagreb") and stole the equivalent of approximately £159,000 from that company during the period from 18 January 2007 to 4 September 2007. The framework list in the EAW has been marked for an offence of laundering of the proceeds of crime.

3. On 8 October 2018 Spencer J granted permission to appeal on two grounds: first, that it is unjust or oppressive under s.14 of the Extradition Act 2003 ("the 2003 Act") for the Appellant to be extradited (**Ground 1**); and second, that the Appellant's extradition is a disproportionate interference in his and his family's rights under Article 8 ECHR (**Ground 2**).

Factual Background

4. The Appellant is now aged 51. He was born in Priboj in what is now Serbia in the former Yugoslavia. When he was very young his parents moved to Beli Manistir, 200 miles from Zagreb, now in Croatia. During much of his working life (interrupted by war in the region) he worked as a driver.

5. The District Judge recorded in his Ruling the Appellant's evidence:

> "**12**. …there came a time in about 2006 when he found employment with a company called SS Promet in Croatia. He worked there as a driver for the two company directors (Messrs Mikelic and Bucan).
>
> **13**. [He] said that whilst in their employ he was told that he would have to replace Mr Bucan as the '*nominal director*' of another company called Astel Zagreb… '*This was because I did not have any companies in my name, so they said would sign the company over to my name. This happened at the start of 2007, although I myself had nothing to do with the company. All I did was to go to a notary in Zagreb and sign a piece of paper, nominally making me director of the company*'.
>
> **14**. [He] added that he felt coerced into becoming a director of Astel Zagreb as he feared losing his job (as a driver) if he declined. He believes his name was removed as a director after a couple of months. He strongly denies any wrongdoing.

> **15**. [He] added that SS Promet… '*suddenly closed down overnight, the directors disappeared and the phones were not answered*'."

6. The Appellant came to the UK in 2008. Some two years later he met his partner Snezana Balog. They have lived together for the past eight years. Ms Balog has a 22-year-old son, Daniel, by an earlier relationship, who also resides with them. He is currently in full-time education. Since 2016 the Appellant has worked as a chauffeur for Plena Capital.

7. The Appellant stated that he has travelled repeatedly to and from Croatia since coming to the UK in 2008 and on no occasion has he ever been stopped by the authorities in respect of the current allegations.

8. He said that he first learned of the matter that is the subject of the EAW in March/April 2018 when he was informed by the Croatian embassy that he had a court case ongoing in Croatia and thus they were not able to renew his expired passport. The Appellant added that he consulted a solicitor in Croatia to make enquiries on his behalf but it appears that little progress was made by that lawyer prior to the Appellant's arrest by the police in the UK on 13 June 2018. The Appellant says that "…he remains ready and willing to co-operate with the Croatian authorities in respect of the theft allegations that he faces. He is of previous good character and expresses concerns as to how his partner… will be able to manage both financially and emotionally if he is extradited" (Ruling, para 23).

The Parties' Submissions and Discussion

9. I will deal with each ground in turn.

Ground 1: Passage of Time (s.14)

The Legal Framework

10. Section 14 of the 2003 Act states:

> "A person's extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have—
>
> (a) committed the extradition offence (where he is accused of its commission) or
>
> (b) become unlawfully at large (where he is alleged to have been convicted of it)."

11. In *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, a case decided under the equivalent provision of the Fugitive Offenders Act 1967, Lord Diplock said (at 782):

> " 'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as

> directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair."

12. Lord Diplock continued (at 783):

> "As respects delay which is not brought about by the acts of the accused himself, … the question of where responsibility lies for the delay is not generally relevant. What matters is not so much the cause of such delay as its effect; or rather, the effects of those events which would not have happened before the trial of the accused if it had taken place with ordinary promptitude."

13. In *Gomes v Government of Trinidad and Tobago* [2009] 1 WLR 103 (at para 31) the House of Lords stated: "the test of oppression will not easily be satisfied: hardship, a comparatively commonplace consequence of an order for extradition, is not enough".

14. In *Nowak v District Court in Koszalin, Poland* [2014] EWHC 118 (Admin), Wyn Williams J (at para 16), following *Gomez,* observed:

> "The test of oppression and of the likelihood of injustice is not easily to be satisfied. Oppression is more than mere hardship. Whether the passage of time has made it unjust to extradite an accused person depends on whether a fair trial remains possible. Council of Europe countries should readily be assumed capable of protecting an accused person against an unjust trial and the burden is upon the accused person to establish the contrary."

Submissions

15. Mr Ben Cooper, on behalf of the Appellant, submits that having found that the Appellant is not a fugitive (Ruling, para 35) the Judge erred in finding that the Croatian authorities had not been guilty of culpable delay (Ruling, para 38).

16. Mr Cooper submits that the Appellant's open life in the UK and his travelling to Croatia "at least ten times" between 2007 and 2017 should have provided ample opportunity to locate him prior to these proceedings. There is, Mr Cooper submits, no satisfactory explanation for the delays between the date of the alleged offence in 2007, the decision to prosecute in 2014, the issue of the EAW in 2017 and the Appellant's arrest in 2018, for all of which delay the Respondent is culpable. Overall, a period of 11 years has passed during which the Appellant has spent more than a decade creating a life in the UK. In particular Mr Cooper contends the Judge erred in failing to place any weight on the seven-year delay between the allegation in 2007 and the decision to prosecute on 18 March 2014. There is no explanation for this delay whatsoever.

17. Further, Mr Cooper submits the Judge failed to take into account that the Appellant has now lost the opportunity to provide a contemporaneous account of the matters

relating to the allegation, having never been questioned. The Respondent's evidence about the availability of witnesses in Croatia goes only to those who will be giving evidence "against" the Appellant; they are unlikely to support his defence that he was merely a driver, coerced into a temporary role in the company performing no official functions and receiving no benefit.

18. Mr Cooper also takes issue with the Judge's statement that the Appellant "has made general assertions of oppression but these have been vague and unsupported by any other persuasive evidence" (Ruling, para 38). Mr Cooper submits that the Judge was wrong to dismiss the Appellant's argument as merely general. He has given specific evidence of the financial and emotional impact on his household, in particular on his partner who suffers from chronic arthritis and, more temporarily, a ruptured Baker's cyst, her student adult stepson and his family in Croatia (his 92-year-old mother and 26-year-old daughter) to whom he sends money, which will be considerable.

19. Mr Cooper also relies on the following responses to the request for further information from the Respondent dated 2 July 2018 ("the further information"):

> "(iii) Please account for any delay in the decision to prosecute being made
>
> - The statutory limitation to prosecute runs from 4 September, 2007, with the term of 20 years, thus, until 4 September 2027.
>
> (iv) Was Senad Terzic made aware of the prosecution? If so, how was Senad Terzic made aware?
>
> - No, because he was not available to the judicial authorities of the Republic of Croatia.
>
> (v) Please account for any delay in the period between the date(s) of the offence(s) and the EAW being issued.
>
> - It is within the given term.
>
> (vi) What efforts were made to trace Senad Terzic during this period?
>
> - Searching for him was carried out in the Republic of Croatia, as well as in the Republic of Serbia.
>
> (vii) Was there any contact between the authorities and Senad Terzic during this period? If so, please give us details of the frequency and nature of the contact.
>
> - No, because he was unavailable to the judicial authorities of the Republic of Croatia.
>
> (viii) Was Senad Terzic permitted to leave the jurisdiction of the requesting judicial authority?

> - No, he had escaped before the criminal proceedings were initiated.
>
> (ix) Was Senad Terzic under any obligation to inform the Prosecuting Authorities of his/her whereabouts? If so, has Senad Terzic complied with this requirement?
>
> - No.
>
> (x) Is there any evidence that Senad Terzic has attempted to evade the investigation or prosecution of the offence(s)? If so, how has he/she attempted to evade investigation and then prosecution?
>
> - There is, because he was not at the address of residence he had given during issuing of identity papers, and he has not reported changes."

20. Mr Cooper submits that the information makes clear that (1) no explanation at all has been given for the delay in the decision to prosecute being made, and (2) there is no satisfactory explanation for the period between the date of the offence and the EAW being issued. All that is said is that the decisions were made were within the statutory limitation period. There is, Mr Cooper submits, no basis for the allegation that the Appellant "escaped" before the criminal proceedings were instituted. The Judge has found that he is not a fugitive. Further, whilst it is said that efforts were made to trace him by searching for him in Croatia (and in Serbia), the fact is he travelled in and out of Croatia through the frontier, many times during this period without being stopped. There was no obligation on him to remain in Croatia and he had no knowledge of any pending proceedings.

21. In addition there is evidence relating to the surrender of his Croatian driving licence and obtaining a UK driving licence, which again, Mr Cooper submits, would have put the Croatian authorities on notice that he was in the UK.

22. It will now be unjust, Mr Cooper contends, to order his extradition. The fact that the Croatian authorities consider that he "escaped" from Croatia will inevitably lead to him being remanded in custody on his return, or at the very least there is a real likelihood that this will be so.

23. Considerable time has passed since the commission of the alleged offence, and the delay between the date of the offence and the decision to prosecute is unexplained. However, in my view, the judge was entitled on the evidence to find that there was no culpable delay on the Respondent's part. Such a conclusion cannot be said to be irrational. The statutory limitation period for prosecuting the Appellant for the offence is 4 September 2027. The Respondent has confirmed that there are witnesses available and willing to give evidence at his trial. Efforts were made to trace him in Croatia and Serbia, the countries to which he had ties, and as Ms Hannah Hinton, on behalf of the Respondent, observes there is no evidence that the Respondent or the police knew of his whereabouts and failed to take positive action to locate him. The Appellant was not at the address of residence he had given at the time his identity papers were issued and he had not reported any change of address. Nevertheless, Mr

Cooper submits that a sense of security had arisen from being a free person, even if the appellant had no advance knowledge of the alleged wrongdoing. Ms Hinton counters that by saying that this is not a case where a false sense of security on the Appellant's part had been engendered. I agree. In any event, I cannot impute the knowledge that the passport officials may have obtained of his whereabouts to the Respondent (see *Spanovic v Croatia* [2009] EWHC 723 (Admin) at paras 20-25).

24. The judge was, in my view, entitled to conclude that it would not be unjust to order extradition in this case. The Appellant has "a good recollection of relevant events" (Ruling, para 39) and there is no evidence that his ability to properly defend himself would be diminished as a result of the passage of time since the commission of the alleged offence. He has not identified any witness who would not now be available and willing to give evidence on his behalf. Further, as the judge noted, no evidence has been served to the effect that Croatia would not abide by its ongoing Convention obligations to afford the Appellant a fair trial (Ruling, para 40).

25. I appreciate the Appellant's concern that in the light of the view taken by the Respondent that he "escaped" before the criminal proceedings were initiated the likelihood is that he would not be granted bail following his extradition. I would hope that the authorities in Croatia when considering any application for bail would have regard to the fact that the judge ordering his extradition had found that he was not a fugitive from justice, and the basis for that finding. However, whether or not the Appellant is granted bail is a separate issue from whether there is a risk that he would not receive the fair trial to which he is entitled pursuant to Article 6 of the Convention.

26. I am not persuaded that the judge was wrong to find that the changes that there have been during the relevant period to his private life and general circumstances are such that it would not be unjust or oppressive for extradition to be ordered.

27. Mr Cooper submits that insufficient weight was given to Ms Balog's health. She has been suffering with pain and stiffness in multiple joints for two years, which is getting worse. Further, a letter from Mr Bruce, her Specialist Musculoskeletal Podiatrist by letter dated 30 August 2018 updates the court as to the mild bilateral mid-foot degeneration, and mild tibialis posterior tendinopathy and inflammatory arthropathy that she suffers from.

28. The Judge accepted that hardship will be caused to the Appellant, his partner and step-son in the event of his extradition (Ruling, para 58(iii)), but he was entitled to conclude on the evidence that such hardship did not amount to oppression. He had regard to the evidence of the Appellant and his partner that they were concerned as to how she would be able to cope emotionally and financially in reaching his conclusion (Ruling, para 57(b)(ii)). Ms Hinton acknowledges that the judge did not deal directly with the evidence of Ms Balog's medical ailments, which include having had a Baker's cyst in her knee and arthritis which makes standing very difficult, but I accept her submission that these ailments were not said to prevent her from working and the judge not unreasonably appears to have given little weight to the evidence relating to her medical condition when assessing whether it would render the Appellant's extradition oppressive. The Judge plainly had in mind her medical condition. I agree with Ms Hinton that there is nothing out of the ordinary in Ms Balog's medical

condition for the purposes of the Section 14 and Article 8 considerations in the extradition context.

29. The allegation relates to a serious offence which carries a sentence of imprisonment of between 1 and 10 years.

Conclusion

30. I consider that the Judge did not err in finding that it would not be unjust or oppressive to extradite the Appellant by reason of the passage of time since he is alleged to have committed the extradition offence.

Ground 2: Article 8 ECHR

31. Mr Cooper submits that there were alternatives to extradition available to the Respondent. He submits that when considering the Article 8 ground the court can take account of his willingness to co-operate with the Croatian authorities by submitting himself for an interview whilst in the UK and/or voluntarily surrendering to Croatia in order to allow the prosecution to progress but without recourse to the EAW and the incomplete response from the Respondent (see his skeleton argument dated 30 November 2018, para 8).

32. By e-mail dated 27 June 2018 Mr Harry Grayson of Shaw Graham Kersh, the Appellant's solicitors, wrote to the Respondent's solicitors:

> "…I now write formally requesting that the [Judicial Authority] consider a less coercive measure as an alternative to extradition in this case, namely a voluntary interview in the UK by the Croatian authorities under the provisions of Section 21B of the Extradition Act.
>
> It would seem that a Section 21B interview would be an appropriate alternative to extradition in this matter for the following reasons;
>
> 1. The RP [Requested Person] is a 50-year-old man of entirely good character both in the UK, where he has lived for the past 10 years, as well as in Croatia.
>
> 2. The RP can in no way be described as a fugitive as he left Croatia 10 years ago without any knowledge that he was wanted for questioning and indeed returned there regularly to visit his family there until his passport expired last year. Indeed it was only after he went to renew his Croatian passport earlier this year, and was told that he could not have a new one, that he was aware that he had any problems with the Croatian authorities.
>
> 3. The RP strenuously denies any wrongdoing in this case and is keen to assist the Croatian authorities by answering their questions in interview.

> 4. He now has a lawyer acting for him in Croatia.
>
> 5. He is in full-time work in the UK and is supporting his partner.
>
> 6. He is on bail and complying with all his conditions.
>
> In all the circumstances please can the views of the Croatian authorities be sought as a matter of urgency regarding an alternative way to progress this matter which may render the EAW unnecessary and with which Mr Terzic is keen to co-operate…"

33. Mr Cooper submits that these factors further reduce the public interest in extradition in this particular case. As such it is a matter that should be taken into account in the Article 8 balancing exercise. Mr Cooper made clear that the Appellant is not pursuing a ground of appeal pursuant to s.21A(i)(b) of the 2003 Act, but only the s.14 and Article 8 grounds. He reminded me that the threshold for disproportionality for the purposes of Article 8 is lower than that for oppression under s.14 (see *Lysiak v District Court in Torun, Poland* [2015] EWHC 3098 (Admin), per Burnett LJ (as he then was) at para 33).

34. The Judge did consider the Appellant's offer to be interviewed as one of the factors in favour of extradition being refused (Ruling, para 57(iii)). However, the Judge (when doing so in the context of s.21A(3)(c)) expressed the view (Ruling, para 59):

> "…I am satisfied … that the Judicial Authority has properly considered, and rejected, the request made for interview on [Mr Terzic's] behalf. Croatia has confirmed that it wishes to proceed with this request for extradition and I do not consider that less coercive measures – short of extradition – appropriately exist in this case (see also *Volle v Germany* [2015] EWHC 1484 (Admin))."

This was a conclusion that the Judge was entitled to reach on the evidence.

35. I have had particular regard to the fact that this is an accusation warrant, there has been very significant delay of more than 10 years between the date of the alleged offence and the Appellant's arrest, at least 7 years of which cannot be laid at the door of the Appellant. However, I do not consider that the judge erred in the Article 8 balancing exercise he conducted. He had proper regard to the factors said to be in favour of extradition being granted and to the factors said to be in favour of extradition being refused. In my view he made the findings that he was entitled to on the evidence and I am not persuaded that his conclusion that it would not be a disproportionate interference with the Article 8 rights of the Appellant for extradition to be ordered is wrong.

36. In my view the judge did not err in finding that the Appellant's extradition is not a disproportionate interference in his and his family's rights under Article 8 ECHR.

Conclusion

37. For the reasons I have given, neither of these grounds of appeal is made out. The decision of the judge is not, in my view, wrong. Accordingly, this appeal is dismissed.