



Neutral Citation Number: [2021] EWHC 2476 (Admin)

Case No: CO/4816/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

9<sup>th</sup> September 2021

**Before :**

**MR JUSTICE FORDHAM**

**Between :**

**ALEXANDRU SEBASTIAN UDRISTE**  
**- and -**  
**COURT OF TRIESTE (ITALY)**

**Appellant**

**Respondent**

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**Benjamin Seifert** (instructed by LansburyWorthington Solicitors) for the **Appellant**  
**Catherine Brown** (instructed by Crown Prosecution Service) for the **Respondent**

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Hearing date: 24.8.21  
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**Final Judgment**

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. This is an extradition appeal raising the issue of compatibility of extradition with rights arising under Article 8 ECHR. Extradition was ordered by District Judge Griffiths (“the District Judge”) on 18 December 2020, for the reasons set out in her careful and clear 39-page and 108-paragraph judgment. Permission to appeal was originally refused on the papers but was granted by William Davis J after an oral hearing on 23 June 2021. The hearing of the appeal before me was in person.
2. The Appellant is aged 33 whose country of origin is Romania. He is wanted for extradition to Italy. That is in conjunction with a European Arrest Warrant (EAW) issued on 20 March 2019 and certified on 12 December 2019. The index offending took place on 15 August 2014 and comprises three relevant offences all of which took place in August 2014. They are described as: (i) punching an individual causing injuries including a fracture to the ocular plain and fractures to the nasal septum; (ii) obstructing police officers who had come to a hospital to identify the Appellant and whom he threatened pushed and punched; and (iii) assaulting a police officer causing a skin lesion to the forearm and trauma to the occipital region. Extradition is sought so that the Appellant can serve the relevant custodial sentence of two years, but it is common ground that there will be a downward adjustment because a fourth offence (offending the honour and prestige of police officers) was the subject of discharge, as was a separate EAW relating to offences in September 2011. The District Judge, unimpeachably in my judgment, said this: “there remains a term of imprisonment to serve of at least one year and 4 months imprisonment, which is not insignificant and which includes a serious offence of violence and other offences of violence against police officers”.

The effect of extradition on Ms Carone

3. At the heart of this case are questions about the implications of extradition of the Appellant for the Appellant’s partner Ms Denise Carone, especially in light of the position of Ms Carone’s mother Ms Barbara Rella. Ms Carone is aged 24 and was born in Italy. She left home aged 17 (in or around 2014) and has lived with the Appellant in the 7 years since: first in Italy (2014-2017) and then in the UK (2017-2021). The Appellant came to the UK in June 2017. Ms Carone travelled to join him here a month later (July 2017). In the intervening month she lived with Ms Rella. Ms Rella is aged 48 and is an Italian citizen working in Italy but living in Slovenia with her younger daughter (aged 15 or 16) who attends school across the border in Italy. The central argument in the case is that extradition of the Appellant would be incompatible with the Article 8 ECHR rights of Ms Carone and that the District Judge was wrong to find otherwise.

Evidence before the District Judge

4. The implications of the Appellant’s extradition for Ms Carone in the context of Article 8 ECHR compatibility were something directly and prominently in issue before the District Judge. Reliance was placed on documents, written evidence and oral evidence. There was oral evidence from the Appellant and from Ms Carone, who were cross-examined,

re-examined and asked questions by the District Judge. In terms of documents, reliance was placed on an assessment of Ms Carone’s “learning difficulties” undertaken in August 2013 in Italy when she was aged 16½ (the “2013 Assessment”). Reliance was also placed on a neuropsychological report dated 30 February 2020 provided by Dr Michael Watts a Consultant Clinical Neuropsychologist (the “Watts Report”). The oral hearing before the District Judge took place on 5 October 2020 and resumed on 27 November 2020. The oral evidence of the Appellant and Ms Carone was given on 5 October 2020. Relied on as their written evidence before the District Judge were a proof of evidence dated 11 March 2020 from the Appellant (the “Appellant’s POE”) and a witness statement dated 5 October 2020 from Ms Carone (the “Carone WS”). The District Judge went into considerable detail in summarising the written evidence and key features of the oral evidence elicited under cross examination. The District Judge went on to make detailed findings on the evidence and then undertook the familiar Article 8 balancing exercise.

### Fresh evidence

5. Materials put before this Court in support of this appeal include a suite of documents which were not put before the District Judge. I considered these materials ‘de bene esse’ and heard submissions about and in the light of them. I have to decide whether to allow the evidence to be admitted as fresh evidence in my inherent jurisdiction, in the interests of justice, having regard in particular to whether the evidence could and should have been adduced before the District Judge and whether the evidence is capable of being decisive (applying the principles and policy in Fenyvesi [2009] EWHC 231 (Admin) discussed in Zabolotnyi v Matleszalka District Court, Hungary [2021] UKSC 14 [2021] 1 WLR 2569 at §57). Fresh evidence will be decisive if it means that the result would have been different, in which case the appeal will succeed (see Zabolotnyi §§56 and 58).
6. Mr Seifert has reminded me that this Court could take the course of admitting the evidence on the basis that it or parts of it should be tested by cross-examination (in particular of Ms Rella, by video link from overseas). He showed me Dzurkova v District Court Decin, Czech Republic [2016] EWHC 1480 (Admin) where fresh evidence in the form of the expert report of a clinical psychologist had been admitted on appeal to this Court in relation to a section 25 issue (whether extradition was unjust or oppressive by reason of physical or mental condition) with an adjournment and relisting so that the expert’s evidence could be tested by cross-examination, as it was.
7. The suite of documents constituting the fresh evidence are as follows. There are Home Office letters dated 29 April 2019 to the Appellant and Ms Carone relating to their pre-settled status under the EU settlement scheme and the circumstances in which that status would lapse (“the Home Office letters”). There is a two-page statement from Ms Rella dated 18 June 2021 (the “Rella WS”). There are two statements of Giovanna Fiorentino, the Appellant’s solicitor, dated 21 July 2021 (“Fiorentino 1”) and 24 August 2021 (“Fiorentino 2”) (24 August 2021 being the date of the hearing before me), each of which is accompanied by documents.

Limited permission to appeal

8. Of the suite of fresh documents the only item which was placed before William Davis J at the permission to appeal stage was the Rella Statement. In giving “limited permission” to appeal in relation to Article 8 ECHR, William Davis J said this: “The applicant has permission to argue that he should be allowed to adduce the evidence contained in the statement of Barbara Rella, dated 18 June 2021 and that, if admitted, this evidence would have led the District Judge concluded that ordering extradition would be disproportionate by reference to the effect on the applicant’s partner”. That is the position taken by Mr Seifert on this appeal. He also submits that the District Judge made findings as to the effect on Ms Carone which were unsustainable on the evidence. I shall come to deal with all of that.

Other aspects of the case

9. Mr Seifert has also maintained that – leaving aside questions and evidence regarding the impact on Ms Carone – the District Judge made a number of “errors” in her assessment of the evidence on other aspects of the case. He says that contention should be entertained by this Court, notwithstanding that he accepts that it falls outside the ambit of the grant of permission to appeal by William Davis J. He submits, alternatively, that those matters should be re-engaged with by this Court if fresh evidence is admitted and if and when – having done so – a new Article 8 balancing exercise comes to be undertaken by this Court. Leaving aside the points relating to the impact on Ms Carone there is, in my judgment, no basis for this Court concluding that the District Judge made any “error” in relation to the other features of the case. Mr Seifert’s list of “errors” was fully considered at the oral permission hearing by William Davis J and he rejected these criticisms as unarguable. I agree that no other aspect of the evidence can be said to have been materially mischaracterised or misdescribed by the Judge. There is no basis for widening the ambit of the permission to appeal. What matters in this case are the points relating to Ms Carone’s position and the impact on her. That may call for this Court revisiting the overall balancing exercise, in order to see whether the outcome – standing back – was “wrong”. But the District Judge’s judgment provides for that purpose a solid framework describing the evidence in the case and her findings on other aspects. I shall deal at the end with the Home Office Letters and a point about Brexit uncertainty.

Features relating to the effect on Ms Carone

10. In analysing the materials and issues in this case it is, in my judgment, helpful to address in turn the following interrelated features. (1) Ms Carone’s assessed difficulties. (2) The relationship of dependency between Ms Carone and the Appellant. (3) The general impact of extradition on Ms Carone. (4) The position concerning Ms Carone living with her mother Ms Rella. I will start with (1) to (3) before turning to (4).
11. As to Ms Carone’s assessed difficulties, the 2013 Assessment sets out the neuropsychological assessment in relation to Ms Carone’s cognitive skills and learning skills. The Watts Report discusses the 2013 Assessment and considers what had been said in the Appellant’s POE and the Carone WS. The report describes Ms Carone’s

developmental delay associated with a congenital birth defect, discusses the cognitive functioning observed in the 2013 Assessment, and describes “the marked cognitive deficits” revealed by previous tests and likely to remain. Dr Watts describes Ms Carone as “a mentally vulnerable young woman by virtue of a congenital birth defect and associated cognitive, learning and functional deficits with significant difficulties managing various activities of daily living particularly those involving verbal comprehension or reasoning, literacy, numeracy and novel problem-solving”. The practical manifestations of these assessed difficulties were described in the Appellant’s POE and in the Carone WS. All of the relevant evidence that was before the District Judge was carefully and accurately described and summarised in the District Judge’s judgment.

12. I turn to the relationship of dependency between Ms Carone and the Appellant. The Watts Report describes the unskilled manual jobs which she had been able to obtain in the UK with the Appellant’s support; the fact that the Appellant would contact places of work and complete the job application, and they would together attend a joint interview with the Appellant taking the lead. The report describes Ms Carone’s memory difficulties and her difficulties in, for example, cooking. It describes the evidence about the Appellant dealing with everything: documents and bills waking up Ms Carone in the morning, setting up a bank account and paying bills. The Watts Report concludes, by reference to Ms Carone’s “significant difficulties managing various activities of daily living”, that Ms Carone is “highly dependent upon her partner the Appellant”. The relationship of dependency between Ms Carone and the Appellant, in light of Ms Carone’s difficulties, was described in the Appellant’s POE and in the Carone WS. Again, all of the relevant evidence that was before the District Judge was carefully and accurately described and summarised in the District Judge’s judgment. For example, the District Judge recorded these aspects of Ms Carone’s evidence relating to her difficulties and the relationship of dependency: “She cannot cook on her own. She forgets if the stove is on and forgets ingredients. She needs assistance to prepare a meal. She cannot manage her finances on her own. The [Appellant] does this for her... She explained that when the [Appellant] was in custody on the EAW, she was on her own and left a heater on at night. This created fumes and she had difficulty breathing. She called the emergency services but was unable to explain herself and they thought it was a prank call. She called her mother who reassured her. She was very scared”. The District Judge explained that the Appellant is Ms Carone’s registered carer. She said this: “The [Appellant] looks after Ms Carone. She needs help from the [Appellant] to wake up for work and to cook. The [Appellant] finds Ms Carone in her employment and shows her how to take the bus to work or he takes to and from work”.
13. I turn to the general impact of extradition on Ms Carone. The District Judge said this: “Should the [Appellant] be extradited, Ms Carone would suffer hardship in managing her daily life in the UK. She will also suffer emotional distress and financial hardship”. Those same observations were repeated in the balancing exercise section of the judgment. Three points are made here: (i) hardship in managing her daily life in the UK; (ii) emotional distress; and (iii) financial hardship. Mr Seifert criticises the District Judge for significantly understating the consequences of the Appellant’s extradition for Ms Carone.

This was one of the “errors” which he advanced at the permission to appeal stage, and which William Davis J concluded was unarguable. In my judgment, there is no error in the District Judge’s description and reasoning. The phrases which the District Judge used were linked to, and need to be read and understood alongside, what she described in the evidence and elsewhere in her findings. So far as concerns “hardship in managing her daily life in the UK”, the District Judge went on to deal specifically with what on the evidence was to happen to Ms Carone if the Appellant were extradited. That is the feature to which I now turn.

The position concerning Ms Carone living with her mother Ms Rella

14. I start this topic with the position as it was before the District Judge and in her judgment. All of the relevant evidence – written and oral – that was before the District Judge on this topic was carefully and accurately described and summarised in the District Judge’s judgment, including the oral evidence and that which had been elicited under cross-examination and from the District Judge’s own questions. There was evidence from the Appellant. The District Judge had recorded as the Appellant’s evidence that, if he were extradited, “Ms Carone would be unable to cope on her own, as she would need someone to take care of her”. The Appellant’s evidence, as summarised by the District Judge, continued:

*Ms Carone’s mother lives in Slovenia. If the [Appellant] were extradited, Ms Carone’s mother would look after Ms Carone but it would be a difficult situation.*

The evidence of the Appellant elicited in cross-examination, summarised by the District Judge, included this:

*In relation to his partner, the [Appellant] explained that they have discussed what she would do, should he be extradited. The [Appellant] explained that the plan would be for Ms Carone to return to live with her mother in Slovenia. He stated that this would be difficult with her medical conditions.*

The District Judge recorded, also as having been elicited in re-examination, the following:

*In relation to his partner, the [Appellant] explained that if she lived with her mum in Slovenia, her life would be different to that in the UK, as she would not have the same freedom and that she would be stuck at home with her mother, without anyone caring for her. He explained that his partner would not have the right to work for the economic freedom that she currently has. He explained that she would not be able to obtain employment in Slovenia, as she does not speak [the] language. He also stated that Ms Carone would not be able to find employment in Trieste as it was difficult to get a job. The [Appellant] explained that even if Ms Carone found a job, she would not be able to get to work as she does not have a car or driving licence and that Ms Carone’s mother worked shifts, from 6am to 2pm one week and from 2pm until 10pm the other week, so she would be unable to take Ms Carone to or from work. He also explained that Ms Carone has a younger sister, aged 15 years, the mother also cares for. The [Appellant] explained that he finds Ms Carone work and that her mother could not take her to doctors or arrange medical appointments for her.*

The District Judge went on to summarise evidence which had been elicited from her own questioning of the Appellant. It included this:

*The [Appellant] told me that Ms Carone's mother is Italian and she does not speak Slovenian. Similarly, he stated that Ms Carone's sister spoke Italian but not Slovenian. He told me that they have lived in Slovenia for around 12 years and they live around 7 KM from the border with Italy. The [Appellant] told me that Ms Carone's mother worked in a factory in Trieste making fire alarms. The [Appellant] stated that Ms Carone's sister goes to school in Italy and that her mother takes her to school as it [is] close to [the] factory where her mother works, in Trieste. He stated that Ms Carone's mother takes her daughter to school at 6am if her shift begins at 6am. He did not know what time school finished... but he thought that her mother also picked her up from school. The [Appellant] stated that he was not sure how Ms Carone's sister got home from school but he stated that she may go to her grandparents' home or to her aunt or uncle's home who all live in Trieste.*

15. There was the evidence from Ms Carone. The District Judge summarised the evidence put forward in writing by Ms Carone herself:

*If the [Appellant] were extradited, she would not be able to cope on her own in the UK. She would return to live with her mother and sister in Slovenia.*

Recording the evidence elicited in cross examination, the District Judge said this:

*Ms Carone explained that if the [Appellant] were extradited her plan is to live with [her] mother in Slovenia. She explained that it would be difficult for her to take the plane and go to Italy on her own. She also stated that it would be hard for her mother, and she has a small daughter. Ms Carone stated that her sister was 16 years old. Ms Carone was unable to recall if she had spoken to her mother about her plans that she had discussed it with the [Appellant]. Ms Carone conceded that the only difficulty returning to live in Slovenia would be taking the plane on her own and the fact that her mother also had her sister to care for a mortgage to pay.*

Summarising the evidence elicited in cross examination the District Judge recorded:

*Ms Carone explained that if she returned to live in Slovenia, she did not know what employment you be able to get as work was hard to obtain in Italy.*

The District Judge then referred to what had been elicited in her own questions of Ms Carone:

*She told me that when the [Appellant] came to the UK, she lived with her mother for a month. Ms Carone explained that she travelled to the UK by plane and that she took this journey on her own that her parents took her to the airport.*

16. In the section of her judgment in which she set out her “findings”, the District Judge said this:

*If the [Appellant] were extradited, Ms Carone's intention is to return to live in Slovenia with her mother and younger sister. Ms Carone works in the UK and if she were to return to Slovenia, she would no doubt lose this employment. That said, she would be returning to live with her mother, with whom she has a close relationship. The mother works and will be able to provide for Ms Carone. I accept that it will be difficult but the evidence is that Ms Carone, with the support of my mother, would cope. I find that her mother would take care of Ms Carone. Ms Carone's*

*mother would be able to do the things that the [Appellant] does for Ms Carone, such as wake her up for work, cook and household chores. I am also satisfied that Ms Carone's mother would be able to help Ms Carone find employment in Italy. I do not know whether she will find a job but her mother would no doubt be able to help her daughter look for work. Ms Carone's mother will also be able to show her daughter how to travel to work, should she find employment or take her to work, as she takes her other daughter to school.*

Mr Seifert submits that these findings were unsustainable on the evidence. I do not accept that submission. The District Judge was making findings, having considered written and oral evidence from the Appellant and Ms Carone, on an issue which had been ventilated in very considerable detail, having had the opportunity to observe the witnesses and to assess the evidence as a whole. Accordingly, it was in my judgment open to the District Judge on the evidence to conclude that Ms Rella would be able to provide for, take care of and support Ms Carone and that – although it would be difficult – with Ms Rella's support Ms Carone would cope.

17. In the later part of the judgment, where the District Judge explained how she had conducted the Article 8 'balancing exercise', the District Judge picked up on these findings. Having referred to her findings that "should the [Appellant] be extradited, Ms Carone would suffer hardship in managing her daily life in the UK. She would also suffer emotional distress and financial hardship", the District Judge said this:

*... the evidence of the [Appellant] and Ms Carone was that if the [Appellant] were extradited, Ms Carone's intention is to return to live in Slovenia with her mother and younger sister. I accept that this is not an ideal situation for Ms Carone and the extradition of the [Appellant] would cause her hardship, but the evidence is that Ms Carone would cope by returning to live with family in Slovenia. Ms Carone works in the UK and if she were to return to Slovenia, she would no doubt lose this employment. Ms Carone would however, be returning to live with her mother, with whom she has a close relationship. Her mother works and will be able to provide for Ms Carone. I accept that it would be difficult but the evidence is that this Carone, with the support of her mother, would cope both emotionally and financially. Ms Carone's mother, I find, would also be able to help out her daughter practically. I find that her mother would take care of Ms Carone. Ms Carone's mother will be able to do the things that the [Appellant] does Ms Carone, such as wake her up for work, cook and do the household chores. I am also satisfied that Ms Carone's mother will be able to help Ms Carone find employment in Italy. I do not know whether she will find a job but her mother would no doubt be able to help her daughter look for work. Ms Carone's mother will also be able to show that daughter how to travel to work, should she find employment. I also note that there are other family members in Italy who help with Ms Carone's sister after school. I have no doubt that the family members would rally around and help Ms Carone, providing emotional and practical support.*

The District Judge also dealt with the issue of Ms Carone's ability to undertake the journey to Slovenia alone concluding that she would be able with the support of family and friends to be able to do so. She said:

*Mr Seifert asked me to take into account the difficulties that Ms Carone would have in trying to undertake the journey to Slovenia alone. I note that the evidence of Ms Carone was that when she came to the UK, to join the [Appellant] who was already in the UK, she took that journey alone. Whilst her parents took her to the airport, once at the airport, she travelled to the UK on her own. The [Appellant] and his partner have friends in the UK. Ms Carone's current job was found through a friend. I find that their friends would therefore be able to help Ms Carone to travel to the airport in the UK, so that she could return to Slovenia to live with her mother. Miss*



*Carone's mother and/or friends, would be able to help her purchase the ticket to travel back to Slovenia. Upon her arrival in Slovenia, she would be able to be met at the airport by her mother.*

In my judgment, the District Judge was in both of these passages making conclusions which were open to her on the evidence that she had read and heard and assessed.

The Rella Statement

18. The District Judge did not have evidence from Ms Rella herself, because none was adduced on behalf of the Appellant. As I have explained, this Court has the Rella Statement as putative fresh evidence. It is a short witness statement containing 11 material paragraphs, as follows (Alex is the Appellant; Denise is Ms Carone):

*3. I am very concerned for the future of my daughter if Alex is to be returned to Italy to serve the sentence imposed by the Italian court. It would be very difficult for Denise to live with me and my younger daughter Jennifer.*

*4. The Slovenian border was closed due to the Covid pandemic. Only those who reside in Slovenia can enter the country. In order to be admitted as resident, an individual must be able to demonstrate that he or she has a job in Italy and/or Slovenia and can support themselves financially. Denise has serious disabilities. She struggles with languages, logic and consequent of thinking. She cannot secure a stable employment and she is unable to learn and speak Slovenian.*

*5. A month ago Denise's father, from whom I separated a long time ago, lost his job as his contract of employment was not renewed. He is not eligible for any state-funded assistance which is available for people who have worked continuously for at least one contractual year.*

*6. Presently Denise's father is financially supported by his partner. Denise requires constant supervision, she has serious difficulties in social settings and cannot be left alone.*

*7. Presently I live in Slovenia and travel daily between Slovenia and Italy. I am required to take a COVID test every seven days. I work from Monday to Friday and sometimes I also work on Saturdays for extra money. Generally my working hours are from 6am until 2pm or alternatively from 2pm until 22:00. On occasion I also work until midnight in order to be able to add a little bit more.*

*8. If Denise were to come to Slovenia she would be left alone unsupervised for most of the time. There is no public transport as we live in the countryside. The nearest bus stop is over half an hour away from*

*9. Last Christmas, Denise's grandfather, who lives in Italy, was admitted to hospital due to COVID. Since his hospital admission the doctors discovered that he suffers from malfunctioning of the heart.*

*10. Following his discharge he has not recovered and continues to require physical constant assistance.*

*11. I was able to secure residency in Slovenia because I have a home in this country in a job in Italy. Denise would not be able to secure a job in Trieste, Italy because of her disability.*

*12. If Alex were to be surrendered to Italy I do not know where Denise could live. Her grandparents are older require assistance themselves so will be unable to supervise her to a safe standard.*

*13. For the reasons set out above I am extremely concerned about my daughter's safety and her future without Alex.*

Fiorentino 1 and 2

19. Fiorentino 1 exhibits a document which describes the basis on which temporary resident status needs to be secured after 90 days by Italian citizens settling in Kopar, Slovenia. Temporary residence is issued for family reasons in the case of a child who, albeit is over

### Approved Judgment

the age of 21, is dependent, provided that there is proof of sufficient means of subsistence and adequate medical insurance. This means, contrary to what is suggested in the Rella Statement (§4) that Ms Carone (a) would be able to enter Slovenia and (b) would not need a job or income to secure residency (c) but rather would be able to secure regularised residence status as a dependent adult child provided proof of sufficient means and adequate medical insurance. Fiorentino 1 also says this:

*I have again spoken with Barbara Rella to ascertain her financial circumstances. She has provided me with her payslips, mortgage statements and list of expenses which I exhibit. Ms Rella earns on average €1700 per month. She has a standard monthly mortgage payment of €1050. She explains the variation in her income because it is dependent upon extra working hours being offered by her employer. Ms Rella expressed to me her serious concerns about her inability to look after her daughter Denise, should the Appellant be extradited to Italy.*

Fiorentino 2 refers to researches describing a requirement from 5 February 2021 introduced by the Slovenian government that citizens living in Slovenia and working in Italy must undertake a PCR test and demonstrate a negative result in order to enter the Slovenian territory, and (by reference to a news item in Italian) that from 22 August 2021 the Slovenian government is no longer providing such tests free of charge. This evidence supports the prospect that Ms Rella may now have to pay for her weekly COVID test (Rella Statement §7), and if Ms Carone found work across the Italian border she may need to do the same. It does not support the suggestion made by Mr Seifert that Ms Rella's teenage daughter has to have a COVID test for which Ms Rella now has to pay.

### Temporal changes

20. Mr Seifert says there are three new developments in a temporal sense. By that I mean events which have taken place since the hearings before the District Judge of which evidence could not have been adduced before her. One is the Covid testing evidence in Fiorentino 2, about arrangements in February 2021 (which matches Rella Statement §7) and August 2021 (about paying for it). Another is the May 2021 loss of employment status and financial position of Ms Carone's father, from whom Ms Rella is long-since separated (Rella Statement §§5-6). The third is the December 2020 hospital admission, diagnosis and current medical condition of Ms Carone's Italy-resident grandfather (Rella Statement §§9-10).

### Information from a new voice

21. Mr Seifert says there is a "new development" since the hearing before the District Judge, not in the sense of any temporal change, but that a "new voice" has spoken giving information in relation to the issues. He says there is a "fundamental change" and a "sea-change". He submits that this new evidence demonstrates that the plan for Ms Carone to live with her mother in Slovenia is one which "cannot work" and which would stand to lead to her "destitution". Mr Seifert says that the reason why that evidence was not adduced before the District Judge was because the Appellant and Ms Carone thought she would be able to go to stay with Ms Rella and that the plan would work. What is now known, from Ms Rella, is that the plan cannot work.

Findings invited by Mr Seifert

22. Mr Seifert helpfully crystallised the findings which he was inviting from this Court, in relation to the effect of extradition of the Appellant on Ms Carone, in light of the fresh evidence. They are these.

*(1) Ms Carone has a significant cognitive impairment. (2) There are real question-marks about Ms Carone's ability to travel unaided to Italy and onward to Slovenia. (3) Ms Rella does not have the time or experience to look after Ms Carone. (4) Ms Rella does not have the finances to support Ms Carone. (5) Ms Rella does not have the ability to arrange employment for Ms Carone. (6) Ms Carone needs supervision and, if left alone in Ms Rella's house, could suffer injury. (7) Ms Carone would not be able to prove the means needed for regularised residence status after 90 days, so that her residence position would become precarious. (8) Ms Carone would also suffer from significant emotional trauma. (9) Ms Carone would not be able to get a job. (10) Ms Carone would be destitute.*

Ms Brown for the Respondent contests all of these matters, save to the extent that they are consistent with what the District Judge set out in the judgment, including based on the evidence in the Watts Report.

Whether to admit the evidence

23. Mr Seifert submits that it is in the interests of justice for the Court in its inherent jurisdiction to allow the fresh evidence. He says there is good reason (§21 above) why the information from the new voice was not adduced before the District Judge, but in any event that latitude is appropriate in this human rights context. He says it would not be just or appropriate, in a human rights case on an issue involving an innocent and vulnerable third party's rights, for the Court to exclude relevant evidence. He says the evidence is capable of being decisive and is decisive the appeal must be allowed on the basis of Article 8 incompatibility of extradition once the evidence is admitted and understood, once appropriate findings are made (§22 above), and when the Article 8 balance is revisited and the outcome re-evaluated. He also says that, insofar as the Court has concerns about the substance of the evidence, or about the procedural position in adducing it on appeal rather than below when Ms Rella could have been cross-examined before the District Judge, the solution would be a Dzurkova adjournment with cross-examination (§6 above).

Discussion

24. I accept that the temporal changes (§20 above) are matters evidence of which could not have been adduced before the District Judge. I also accept that having to pay for the Covid test would serve as another expense for Ms Rella. It was never said that Ms Carone would go to live in or be supported by the household of the father from whom Ms Rella separated a long ago. I can see that the grandfather's health problems may make things more difficult as regards the "family members" who the District Judge found "would rally round", and who also help with arrangements regarding Ms Rella's teenage daughter, remembering that the evidence described not just the grandparents' home but also the aunt and uncle's home, all of them living in Trieste.

25. As to the information from a new voice (§21 above), I cannot accept that there is good reason why this evidence was not adduced before the District Judge. There was ample opportunity. The “plan” for Ms Carone to live with Ms Rella loomed large in the evidence and at the hearing before the District Judge. The Appellant was giving evidence about the “situation” and that it would be a “difficult” one, was describing discussions of the plan, and referred to difficulty because of Ms Rella’s “medical conditions”. Ms Rella was an important person, a very close family member. Details were being given to the District Judge, including for example as to her shift patterns. The Rella Statement shows those shift patterns to have been understood. It was Ms Rella to whom Ms Carone had spoken for support when the Appellant was arrested. It was with Ms Rella that Ms Carone had lived during the only month in seven years when she had been separated from the Appellant. There was every opportunity, and every reason, to have been in touch with Ms Rella. There is no evidence of any lack of contact, or of any crossed wires or misunderstanding, nor as to how any misunderstanding came about. No evidence before this Court provides any explanation for this. The position is especially striking when it is recognised that the oral evidence, cross-examination and questions from the District Judge all took place at the oral hearing on 5 October 2020. There were then six weeks before the hearing resumed on 27 November 2020. It cannot be right for an appellant to rely on fresh evidence on appeal from a key witness when evidence could have been adduced before the District Judge, by reference to this being ‘a new voice giving information’, emphasising that human rights are in play and this Court can direct cross-examination. That would be a recipe for fresh evidence routinely to be put forward in extradition appeals, contrary to the policy (paragraphs 32 and 33 of Fenyvesi, endorsed in Zabolotnyi at paragraph 57).
26. In my judgment, the putative fresh evidence which is put forward is not capable of being decisive. Mr Seifert’s invited finding (1) (Ms Carone’s significant cognitive impairment) is addressed by other evidence. Invited finding (2) (Ms Carone’s ability to travel) is also addressed by other evidence and the question marks were unimpeachably resolved by the District Judge. Invited finding (8) (emotional harm is addressed by other evidence) and unimpeachably recognised in the District Judge’s finding of “emotional distress”. The fresh evidence is not capable of taking these matters to a materially different place or in a materially new direction.
27. The Rella Statement makes points relating to safety, constant supervision and whether or not Ms Carone can be left unsupervised at home when Ms Rella is at work, if Ms Carone has not succeeded in obtaining employment. This is relevant to part of Mr Seifert’s invited finding (3) (Ms Rella lacking time to look after Ms Carone) and invited finding (6) (Ms Carone needing supervision and risk of injury if left alone). The fresh evidence says Ms Carone “would be left alone unsupervised for most of the time” (Rella Statement §8). It says Ms Carone “requires constant supervision” and “cannot be left alone” (Rella Statement §6). It says Ms Rella works long hours 6am to 2pm or 2pm to 10pm (sometimes midnight) in Italy (Rella Statement §7). But the District Judge had detailed and direct evidence, including oral evidence with cross-examination, about whether Ms Carone could be left alone unsupervised and about whether she requires constant supervision. The evidence plainly did not go that far. The District Judge was aware that

Ms Carone had been living with the Appellant for the last 7 years, except for the month in 2017 when she lived with Ms Rella. The District Judge clearly contemplated that Ms Carone might be in her mother's home in Slovenia for extended periods. She expressly contemplated that Ms Carone might not be successful in finding work. The District Judge had, and recorded, the detailed evidence about Ms Rella's shift patterns across the border in Italy. Part of the evidence before the District Judge related to a period of three months when Ms Carone had been out of work in the United Kingdom, but when the Appellant had been working. Those were periods when Ms Carone was at home, unsupervised. It is very clear that the District Judge did not accept that Ms Carone "requires constant supervision" and "cannot be left alone". The point goes further. The "plan" which the Appellant described and which he and Ms Carone both regarded as one which could work – as Mr Seifert accepts and indeed puts forward as the explanation for not adducing evidence from Ms Rella – was a plan which had been devised notwithstanding (i) the known working patterns of Ms Rella (ii) the known and expressed difficulties in Ms Carone herself obtaining work and so (iii) the prospect of periods at home unsupervised. This was a plan which "could work" in going to Slovenia to live with her mother, which is something itself inconsistent with the suggestion – from those who knew best – that Ms Carone "requires constant supervision" and "cannot be left alone". The fresh evidence does not say that Ms Rella lacks the "experience" to look after Ms Carone (the other part of Mr Seifert's invited finding (3)).

28. The other key theme is about Ms Rella's financial position and whether Ms Carone would be able to find work. Reliance is placed on the Rella statement and in Fiorentino 1 and 2. As I have explained, Mr Seifert invites these findings:

*(4) Ms Rella does not have the finances to support Ms Carone. (5) Ms Rella does not have the ability to arrange employment for Ms Carone. (7) Ms Carone would not be able to prove the means needed for regularised residence status after 90 days, so that her residence position would become precarious. (9) Ms Carone would not be able to get a job. (10) Ms Carone would be destitute.*

Invited findings (5) and (9) are about whether Ms Carone would succeed in getting a job. As I have explained, the "plan" which the Appellant described and which he and Ms Carone both regarded as one which, although "difficult", could "work" – this being put forward as the explanation for not adducing evidence from Ms Rella – was a plan devised notwithstanding the known working arrangements of Ms Rella and the known and expressed difficulties in Ms Carone herself obtaining work. As I have also explained, the District Judge expressly recognised that Ms Carone may or may not be successful with her mother's help and support in obtaining employment, as she had been successful with the Appellant's help and support to do in the UK. The fresh evidence expresses the view that Ms Carone would not, by reason of her disability and language difficulties, be able to secure employment (Rella statement §§4 and 11). That leaves invited findings (4), (7) and (10) and Ms Rella's financial means. These findings are not, in my judgment, sustained by the fresh evidence. Ms Rella gave her statement. It did not say that she would be unable to provide Ms Carone with the basic necessities of life. It did not say that Ms Rella lacks the financial means to support Ms Carone. It did not say that Ms Rella can only afford to support one daughter, not two. It did not say that other family members would or could not rally round to help in making ends meet. Ms Rella's own description is that it would be "very difficult" (Rella Statement §3). Fiorentino 1 gave reported and

documented income details. They do not on their face lead to invited findings (4), (7) and (10). Fiorentino refers to Ms Rella having expressed “serious concerns about her inability to look after her daughter”.

29. The evidence from the Appellant and Ms Carone, as to the “plan”, was that it would be “difficult”. The District Judge recognised that. The fresh evidence does not support the conclusion that Ms Rella would lack the means to be able to provide a subsistence both for her teenage daughter and her 24 year old daughter Ms Carone. Nor does the fresh evidence, even taken at its highest, undermine what the District Judge found that “family members will rally round and help was Carone, providing emotional and practical support”. The District Judge found that for Ms Carone to return without the Appellant to Slovenia to live with her mother and younger sister would cause Ms Carone hardship, but the evidence was that she would cope. That is consistent with the fresh evidence.
30. That leaves the Home Office Letters. Plainly they could have been adduced before the District Judge. They explain that pre-settled status lapses after absence from the United Kingdom for a continuous period of more than two years. As Ms Brown points out – and the District Judge recognised – the period to be served in this case must be less than two years (given the discharge on part of the EAW). Subjective and objective Brexit uncertainty are not capable in my judgment of altering the outcome in the present case, when viewed alongside the other features of the case.
31. If I step back and consider all the evidence before this Court to answer the other circumstances of the case, in my judgment this is a case in which the factors in support of extradition correctly identified by the District Judge decisively outweigh the factors against extradition including the effect on Ms Carone. The District Judge’s analysis of Article 8 involved an impeccable Article 8 balancing exercise. The District Judge rightly recognised the strong public interest considerations in favour of extradition, including in circumstances where the Appellant came to the United Kingdom as a fugitive from Italian justice in 2017, having been sentenced to custody in relation to the index offending with which the EAW is concerned. The passage of time in this case arose in that context of fugitivity, albeit that it still has the well-recognised significance that the passage of time in an Article 8 case, as tending to weaken the public interest in favour of extradition and tending to strengthen the routes and times which underpin private life and family life. The District Judge unimpeachably concluded that Ms Carone would be able with family assistance to travel solo back to Italy and to her mother’s house in Slovenia, just as she had been able to travel solo the other way when arriving in the foreign country of the United Kingdom in July 2017. The evidence – including the putative fresh evidence – does not support the conclusion that Ms Carone cannot live with Ms Rella or that she will be rendered destitute. The items of fresh evidence, whether approached individually or cumulatively, are incapable of being decisive. For that reason, I formally refuse permission to rely on them. There is in my judgment no freestanding basis on which the District Judge’s conclusion on the Article 8 compatibility of extradition can be impugned. It is neither necessary nor appropriate, in the circumstances of this case, for the Court to take, whether of its own motion or at the contingent invitation of Mr Seifert, the course of adjourning for oral evidence by video-link from overseas with cross-examination.

Conclusion

32. In those circumstances and for those reasons: (1) I refuse permission to rely on the fresh evidence; and (2) the appeal is dismissed; with (3) no order as to costs save that there be a detailed assessment of the Appellant's publicly funded costs.