



Neutral Citation Number: [2021] EWHC 1862 (Admin)

Case No: CO/252/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/07/2021

Before :

MR JUSTICE WILLIAM DAVIS

Between :

BALAZ

- and -

DISTRICT COURT OF ZVOLEN (SLOVAKIA)

Applicant

Respondent

Malcolm Hawkes (instructed by West Midlands Solicitors) for the **Applicant**
Stefan Hyman (instructed by CPS Extradition Unit) for the **Respondent**

Hearing date: 22nd June 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10.30am on 5th July 2021

Mr Justice William Davis :

1. Gabriel Balaz is a Slovak national. Since 2015 he has been living and working in the United Kingdom. He has a partner with whom he lives. They have a young daughter.
2. On 1 April 2019 the Judicial Authority in the Slovak Republic issued an accusation European Arrest Warrant (“EAW”) in respect of Mr Balaz. It was certified by the NCA on 12 May 2019. Mr Balaz was arrested on that day.
3. Extradition proceedings were heard in the Westminster Magistrates’ Court in November 2019 and January 2020. On 21 January 2021 District Judge (Magistrates’ Courts) Deborah Wright handed down her written reasons in which she ordered the extradition of Mr Balaz pursuant to the EAW.
4. Mr Balaz appeals against that order on a limited basis by permission of Mrs Justice Farbey. Permission to appeal initially was refused on the papers by Mr Justice Johnson. The single ground on which Mr Balaz has permission is whether his extradition is sought in respect of an extradition offence.
5. The conduct which was said to constitute an offence was set out by the District Judge in paragraph 3 of her reasons. She summarised the position and quoted the terms of the EAW.

The warrant relates to an offence of fraud, said to have been committed in the period up to 12th September 2017. The Framework list has been ticked under the category of swindling. In broad terms, the requested person is said to have placed an advertisement on a website which induced four people from the Slovak Republic to travel to Germany to meet the requested person where they paid him the sum of £1000 in exchange for the promise of work and accommodation. It is alleged that the requested person, having received the money, disappeared immediately after without providing any work. The actual wording used in Box (e) of the EAW, setting out the details of the alleged wrongdoing, needs to be examined when looking at the arguments:

“The accused in the unspecified time in the period until 12

September 2017 at the unspecified place on the website

www.praca.eu published a false advertisement offering work in the

warehouse in Berlin, Federal Republic of Germany. Ivan Urban,

date of birth 7 February 1996..... replied to the advertisement on

12 September 2017 and communicated by mail and phone with the

accused who used to the name nom Bolzman and agreed on the

conditions of the arrival to the Federal Republic of Germany,

including meeting with the presumed coordinator, Mr Heyduk and

including job details for Ivan Urban and later also jobs for other

persons[3 people named]. On 17 September 2017 these four

persons arrived to Berlin, Federal Republic of Germany at the

guesthouse Laabs..... Where they all met with the accused named Mr Heyduk,

they signed the working and accommodation contracts and Ivan Urban gave

the accused cash amounting to €1000, which

covered the price of accommodation for all four persons. After the

accused received the money, he has left and the aggrieved party

could not contact him anymore; he has failed to provide the agreed

job and the financial means he has used for his own purposes by which he has misled the aggrieved party and caused damage to Ivan Urban amounting to €1000.”

The offence charged was as follows:

Fraud

(1) Any person who enriches himself or other to the detriment of another person's property through misrepresentation of another person or through taking advantage of another person's mistake, and thus causes small damage to the property of another, shall be liable to a term of imprisonment of up to two years.

6. As I have said the EAW was issued by the Judicial Authority in the Slovak Republic. The place where the conduct took place is very much in issue. The most likely place in which the relevant conduct occurred was Germany. Thus, the District Judge had to address whether the matter in respect of which Mr Balaz's extradition was sought was an extradition offence. This required consideration of Section 64(4) of the Extradition Act 2003:

(4) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied—
(a) the conduct occurs outside the category 1 territory;
(b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment.
(c) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment (however it is described in that law);

The critical issue was whether the equivalent conduct in this jurisdiction would constitute an extra-territorial offence under the law of England and Wales.

7. The District Judge found that the extra-territoriality requirement was met on two bases. The first basis proceeded on the premise that the conduct set out in the EAW was equivalent to the offence of fraud contrary to Section 1 of the Fraud Act 2006. From there the District Judge moved to consider the effect of the Criminal Justice Act 1993 as amended. Section 1 of that Act sets out the offences to which the Act applies. One such offence is the offence of fraud. It is classified as a Group A offence. Section 2 of the Act is as follows:

(1) For the purposes of this Part, “relevant event” , in relation to any Group A offence, meansany act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.
(1A) In relation to an offence under section 1 of the Fraud Act 2006 (fraud), “relevant event” includes—
(a) if the fraud involved an intention to make a gain and the gain occurred, that occurrence;

- (b) if the fraud involved an intention to cause a loss or to expose another to a risk of loss and the loss occurred, that occurrence.*
- (2) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.*
- (3) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in England and Wales.*

Section 4 of the Act is in these terms:

In relation to a Group A or Group B offence—

- (a) there is an obtaining of property in England and Wales if the property is either despatched from or received at a place in England and Wales; and*
- (b) there is a communication in England and Wales of any information, instruction, request, demand or other matter if it is sent by any means—*
- (i) from a place in England and Wales to a place elsewhere; or*
- (ii) from a place elsewhere to a place in England and Wales.*

8. The District Judge analysed the conduct with which she was concerned. She concluded that relevant events had occurred in the Republic of Slovakia, namely that property had been despatched from that country and that a communication had been sent to that country. Thus, the offence of fraud would have been an extra-territorial offence under the law of England and Wales. By that route Section 64(4)(b) was satisfied.
9. In the appeal the Judicial Authority does not seek to support that reasoning. I consider that this concession is properly made. First, the offence of fraud by false representation as committed within this jurisdiction is complete once a false representation is made dishonestly with the requisite intent. The reference to an obtaining of property is not apposite. Second, by reference to Section 2(1A) of the 1993 Act the gain or loss of 1,000 euros did not occur in the Republic of Slovakia. For Section 4 of the 1993 Act to give jurisdiction the relevant property i.e. 1,000 euros would have had to have been despatched from the Republic of Slovakia. The District Judge found that the complainants had travelled from Slovakia to Germany. Simply by reference to that fact, she concluded that the money had been despatched from the Republic of Slovakia. Even if the term “despatched from” in Section 4 of the 1993 Act is to be read so as to include a person taking property from one country to another – which in itself is doubtful – there was no material available to the District Judge permitting her to draw the inference she did.
10. The second basis on which the District Judge found that Mr Balaz’s conduct constituted an extradition offence was by reference to the money laundering provisions in the Proceeds of Crime Act 2002. She concluded that the provisions in Sections 327 to 329 of the 2002 Act are extra-territorial. Section 329(1) creates the offence of possession of criminal property. Mr Balaz obtained 1,000 euros from the complainant, Mr Urban. Once in his hands this was criminal property because it was the benefit derived from the fraud. A person will not commit the offence if he knows or believes that the relevant conduct occurred outside the United Kingdom **and** the conduct was not unlawful in the country in which it did occur. However, the offence can be committed extra-

territorially if it was unlawful in the foreign jurisdiction. The District Judge stated that money laundering is an offence in Germany i.e. the country in which Mr Balaz had possession of the money. It followed that the equivalent conduct in this jurisdiction would have amounted to the offence contrary to Section 329(1) of the 2002 Act. The Judicial Authority supports that reasoning.

11. Before the District Judge it was not submitted on behalf of Mr Balaz that the District Judge's analysis of the conduct was wrong or that she erred in concluding that an offence contrary to Section 329(1) of the 2002 Act was extra-territorial in nature. Although the authority establishing that a money laundering offence is extra-territorial (*Rogers and others* [2014] EWCA Crim 1680) was concerned with Section 327 of the 2002 Act, it was conceded that it was of general application to any offence under the money laundering provisions. Nor was it suggested that the District Judge was wrong in stating that money laundering (of the kind involved here) is an offence in Germany. Rather, it was argued that, in this jurisdiction, the conduct would be prosecuted as an offence of fraud rather than possession of criminal property.
12. This argument, which has been repeated before me, runs as follows. In this jurisdiction, were someone to commit an offence of fraud resulting in loss to another, they would be prosecuted for the substantive offence. They would not be prosecuted for the offence of possession of criminal property. This would follow from what was said by the Supreme Court in *R v GH* [2015] UKSC 24 at [48] and [49].

*.....sections 327 and 329. A thief is not guilty of acquiring criminal property by his act of stealing it from its lawful owner, but that does not prevent him from being guilty thereafter of an offence under one or other, or both, of those sections by possessing, using, concealing, transferring it and so on. The ambit of those sections is wide. However, it would be bad practice for the prosecution to add additional counts of that kind unless there is a proper public purpose in doing so, for example, because there may be doubt whether the prosecution can prove that the defendant was the thief but it can prove that he concealed what he must have known or suspected was stolen property, or because the thief's conduct involved some added criminality not just as a matter of legal definition but sufficiently distinct from the offence that the public interest would merit it being charged separately. *Brink's-Mat Ltd v Noye* [1991] 1 Bank LR 68 provides a notorious example of the laundering of the proceeds of the theft of gold bars from a warehouse, but the conduct of thieves in laundering property stolen by them would not have to be on such a grand scale to merit them being prosecuted for it.*

*The courts should be willing to use their powers to discourage inappropriate use of the provisions of POCA to prosecute conduct which is sufficiently covered by substantive offences, as they have done in relation to handling stolen property. A person who commits the offence of handling stolen property contrary to section 22 of the Theft Act 1968 is also necessarily guilty of an offence under section 329 of POCA, but the Court of Appeal has discouraged any practice of prosecuting such cases under POCA instead of charging the specific statutory offence under the Theft Act (see *R (Wilkinson) v Director of Public Prosecutions* [2006] EWHC 3012 (Admin) and *R v Rose* [2008] EWCA Crim 239, [2008] 1 WLR 2113, para 20). It is unlikely that the prosecution*

would fail to respect the view of the court in such a matter and it is unnecessary to consider what power the court might have in such an unlikely event.

The words “*equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom*” in Section 64(4)(b) of the 2003 Act should be read so as to include the words “that would be prosecuted” after “offence”.

13. The District Judge rejected this argument. She said that, were the submission to be correct, it would require the court in any extradition proceedings to consider the evidential and interests of justice tests to be applied in relation to the offence. The District Judge concluded that such an exercise was not intended by the terms of Section 64(4)(b) of the 2003 Act.
14. The Judicial Authority submits that what was said in *R v GH* does not assist Mr Balaz on the facts of this case. Were he to have committed the acts of which he is accused in the EAW in this jurisdiction, he properly could have been prosecuted for an offence under Section 329 of the 2002 Act as well as for an offence of fraud. That latter offence would not necessarily involve any gain. The possession of criminal property as a result of fraud could be charged separately. The substantive offence could be said not sufficiently to cover the overall conduct. A charge under Section 329 would make it clear that the offender had actually obtained a benefit. This is to be distinguished from the position of someone charged with handling stolen goods. In its primary form that offence requires receipt of the relevant property.
15. The Judicial Authority argues that, in any event, the wording of Section 64(4)(b) is unambiguous. The reading down of the additional words proposed on behalf of Mr Balaz is unnecessary and not justified. The proposal serves to confuse conduct with jurisdiction. The conduct amounts to the offence of possession of criminal property. Whether it would be charged as such in an English or Welsh criminal court is not the point.
16. I am satisfied that Mr Balaz’s argument is misconceived for the reasons put forward by the Judicial Authority. The conduct set out in box (e) of the EAW is equivalent to the offence of possession of criminal property. Whether it would be charged as such in this jurisdiction does not matter. As the District Judge observed, to go beyond the simple equivalence of conduct and UK offence would involve an investigation wholly outside the requirements of the extradition process. There is no justification for reading down any additional passage into the statutory provisions. They are clear as set out in the statute.
17. On appeal a further point is raised on behalf of Mr Balaz. It is not clear to me that it was argued other than in passing before the District Judge. She did not deal with it at all. I shall not consider the extent to which the issue permissibly can be raised at this stage. Rather, I shall deal with it on its merits.

18. The further point arises from consideration of Section 329(2)/(3) of the 2002 Act. Insofar as is relevant, it is as follows:
- (2)But a person does not commit such an offence if-.....*
(c)he acquired or used or had possession of the property for adequate consideration;
- (3)For the purposes of this section-*
(a)a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property...
19. The submission made is that, by reference to box (e), the 1,000 euros handed to the person said to be Mr Balaz “covered the price of accommodation for all four persons”. The particulars provided within the warrant do not indicate that accommodation was not provided. The only allegation made in the particulars is that the offender failed to provide a job as promised. Thus, adequate consideration was provided for the money in the possession of the person said to be Mr Balaz. In those circumstances, Section 329(2)(c) means that no offence was committed.
20. This is a selective analysis of the terms of box (e). The succeeding passage states that the offender had used the money for his own purposes and had caused loss to Mr Urban in the sum obtained. Read as a whole it is clear that the sum paid over was misused by the person said to be Mr Balaz. Moreover, the wording of box (e) cannot be read as meaning that the sum paid was sufficient only and intended only to meet the cost of accommodation. The wording is entirely consistent with the proposition that the sum paid was in part the cost of accommodation. That would reflect the overall transaction reflected in the EAW which would have involved some kind of finders’ or agency fee in relation to employment contracts. Had the issue been raised in full before the District Judge she would have ruled against the argument put by Mr Balaz both for these reasons and because she would have had no evidence to support the analysis advanced on his behalf. I am confident in the latter conclusion since I have had no evidence on the point.
21. It follows that the only point on which Mr Balaz has been given leave to appeal fails. The order of the District Judge must stand. Mr Balaz is now the subject of criminal proceedings in this country. He is awaiting trial in the Crown Court at Wolverhampton in respect of two counts of theft of motor vehicles. The trial is not listed until June 2022. Rather than order Mr Balaz’s extradition forthwith, I shall make an order under Section 36B(2) of the 2003 Act. The order to be drawn up by the parties must reflect this provision.