



Neutral Citation Number: [2024] EWHC 1477 (Admin)

Case No: AC-2023-LON-000903

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/06/2024

Before

MR JUSTICE SWIFT

Between

PREDRAG STOJCEVIC

Appellant

- and -

COUNTY COURT OF OSIJEK, CROATIA

Respondent

Mr Benjamin Joyes and Mr Tihomir Mak (instructed by **Hollingsworth Edwards Solicitors**) for the **Appellant**
Kathryn Howarth (instructed by **CPS**) for the **Respondent**

Hearing date: 25 April 2024

Approved Judgment

This judgment was handed down remotely at 9.30am on 18 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWIFT**A. Introduction**

1. Predrag Stojcevic appeals against an extradition order made on 23 February 2023. The order rests on a warrant issued on 5 April 2022, and certified by the National Crime Agency on 4 May 2022. The warrant is an accusation warrant. The allegations against the Appellant are that in 1991 when he was a soldier in the Yugoslav People's Army, he participated in what are described as beatings and torture. Four instances are alleged; five victims are identified. The allegations were summarised as follows by District Judge.

“4. At the material time of these allegations the RP was a young infantryman serving in the army, and is accused of participating along with other soldiers in various incidents of beatings and torture, the particulars of which are set forth within the warrant, and are as follows:

(i) The first incident is said to have occurred in mid-October 1991 whereby a man by the name of Nadford was struck with rifle butts, wooden clubs and otherwise over a prolonged period following which the complainant lost consciousness.

(ii) The second incident occurred on or about the same time when a man by the name of Monar was the subject of an interrogation and came to be tortured during that process of an enquiry as to the location of weapons and radio equipment. The attack utilised what is described as PTT cable. The attack is said to have lasted some 3 hours.

(iii) The third incident occurred on the 13 October 1991 when a man by the name of Varga was made the subject of an attack in much the same manner as that specified in the first incident, but also is said to have included the kicking of the complainant with military style boots and the torturing of the person by pouring water on to him. He was to lose consciousness, was revived and struck again. The injuries are serious and included multiple haematomas to the brain and an internal rupture of the kidney.

(iv) The fourth and final incident occurred in November 1991 when the RP, again along with other persons attacked and assaulted two persons both by the names of Hardi. One of the persons, Mihalo Hardi, sustained extreme injuries including a fracture of the right rib, tooth luxation caused by trauma, contusions and haematoma of the right gluteal and lumbar sacral region, chest and upper leg.”

The events alleged are said to have happened during the Yugoslav wars that took place on the break-up of Yugoslavia. The allegations have been charged as offences under article 120(1) of the Basic Criminal Code of the Republic of Croatia as in force between 1977 and 1997. The material part of article 120 is as follows.

“(1) Whoever violates the rules of international law in time of war, armed conflict or occupation and orders an attack against the civilian population, settlements, individual civilians or those hors de combat resulting in death, severe bodily harm or serious damage to people’s health; ... orders civilians to be subjected to great suffering impairing the integrity of their bodies or health; ... or whoever commits any of the foregoing acts, will be punished by a term of imprisonment of a minimum of 5 years or an imprisonment of 20 years. ...”

2. There are three pleaded grounds of appeal: (a) by reason of the passage of time since the events alleged, extradition would be unjust or oppressive (Extradition Act 2003, section 14); (b) extradition would comprise an unjustified interference with the article 8 rights of the Appellant and his family who have been settled in the United Kingdom since March 1999 (Extradition Act 2003, section 21A); and (c) were extradition to be ordered there is a real risk that the Appellant would suffer prejudice either at trial or, if convicted when sentenced, because he is an ethnic Serb. In addition, the Appellant seeks permission to amend to add a further ground of appeal that extradition would expose him to a real risk of article 3 ill-treatment by reason of overcrowding in Croatian prisons.
3. There are three applications to admit further evidence on matters relevant to the section 14 and article 8 grounds of appeal. The Appellant makes two applications: (a) by an Application Notice dated 4 December 2023 to admit documents obtained from the court files of the Croatian courts responsible for underlying criminal proceedings ; and (b) by Application Notice dated 11 April 2024, to admit a witness statement made by Anto Nobilo, a Croatian lawyer who acts for him in Croatia that confirms the provenance of the documents referred to in the first application. The other application is made by the Requesting Judicial Authority on 18 April 2024. This application is to admit a Further Information document dated 10 April 2024. This document confirms the dates on which orders were made by the two courts in Croatia that have considered the underlying criminal proceedings. I will allow all three applications.

B. Decision

(1) Section 14, Extradition Act 2003: extradition would be unjust or oppressive.

4. The Appellant’s case rests on the passage of time, in particular the time that has passed since 2011. The sequence of events may be summarised in this way. The offending alleged against the Appellant is said to have taken place in October and November 1991. The allegations were reported to the police in 2005. In September 2006 the County Court in Vukovar made an order requiring the police to search for the Appellant and the others said to have taken part in the assaults. In September 2007

the State Attorney sent an indictment to the court to be preferred against the Appellant. Next there was an order of the County Court in Vukovar dated 22 March 2010. This stated that the court had issued an “international search notice” in respect of the Appellant and the others said to have been involved in the assaults. The effect of this notice is not clear. The most likely explanation is that it is an order containing a request that a search for the Appellant be conducted outside Croatia. This explanation fits best with the next document, a letter from the Croatia Ministry of Interior to the Ministry of Justice dated 5 December 2011, enclosing various documents including the order made on 22 March 2010. The Ministry of Justice was then asked to:

“... provide your opinion and statement on whether extradition of the named person would be requested if he is arrested in a foreign country and placed in extradition detention.”

5. It seems that nothing further happened until 2018. There is a letter dated 22 November 2018 from the Croatian Ministry of Justice to the District Court of Vukovar (which I assume is the same court as the County Court in Vukovar) referring to the order of 22 March 2010. The letter appears to contain a response to the letter dated 5 December 2011. The letter includes the following:

“... The positive opinion of the Ministry of Justice is a prerequisite for the eventual issuance of an international notice of the named defendant, that is, for the submission of a request by NCB Interpol Zagreb to the NCB Interpol Secretariat in Lyon for the issuance of an international notice for the named defendant.

Considering a significant passage of time, and under Article 40 paragraph 1 of the law on International Legal Assistance in Criminal Matters ... the Minister of Justice submits a request for extradition at the request of the domestic judicial authority and the red international notice is a request for temporary arrest. By referring to our reference and case number, please state urgently whether you require the issuance of the international notice against the defendant Predrag Stojcevic.”

Thus, it seems by November 2019 no action had been taken in response to the court’s order made on 22 March 2010.

6. The next document is a letter dated 13 August 2019 from the Croatian Ministry of the Interior to the County Court in Osijek (which is the Requesting Judicial Authority in these extradition proceedings). The letter stated:

“Regarding the international search for the person in question, we inform you that we have received notification from Interpol Manchester, Great Britain stating that the person in question resides in Great Britain and that the competent judicial

authorities of that country request the delivery of an arrest warrant, with an English translation.”

The Ministry asked the Court to provide the required arrest warrant.

7. The hearing bundle for this appeal also contains a letter dated 4 October 2019 from the Requesting Judicial Authority to the Croatian Ministry of Justice requesting “... the issuance of an international notice for ...” the Appellant. I have no explanation of this document: for example, how it fits with the request made in August 2019 that the Requesting Judicial Authority issue a warrant.
8. A European Arrest Warrant was issued by the Requesting Judicial Authority on 7 January 2020. That warrant stated that it was premised on the search order made in September 2006. This warrant was not pursued. I have been provided with no explanation for this. The warrant relied on in these extradition proceedings, also premised on the September 2006 search order, was issued by the Requesting Judicial Authority on 5 April 2022.
9. In these extradition proceedings, repeated requests have been made to the Requesting Judicial Authority to explain these matters. In July 2022, the Requesting Judicial Authority replied that there had been “no delay” because a “red notice” was issued before the date the indictment was preferred. I assume the red notice referred to is the search order made by the County Court in Vukovar in September 2006. The Requesting Judicial Authority repeated this point in the second Further Information document dated 11 August 2022. In the fourth Further Information document, dated 24 January 2023, the Requesting Judicial Authority said this:

“Referring to your repeated question asking us to tell you why Croatian authorities decided not to issue a European Arrest Warrant after that option became available to them based on accession to the European Union in 2013, I can inform you that an attempt was made to forward the criminal case against the accused Predrag Stojcevic and other accused persons to further trial in the Republic of Serbia, but seeing as the Republic of Serbia did not accept the criminal proceedings, the County Court in Osijek issued the European Arrest Warrant.”

However there is no further explanation of this: for example for when the Serbian government was asked to pursue the complaints against the Appellant; or when the Serbian government decided it would “not accept” that request.

10. Drawing these matters together, there are periods of unexplained delay starting in March 2010, comprising: (a) a period of 8 years until the letter from the Croatian Ministry of Justice apparently agreeing to an extradition request; then (b) a period until January 2020 when a warrant was issued but apparently not pursued; and finally (c) a period to April 2022 when the warrant relied on in these proceedings was issued.

11. The District Judge considered this sequence of events at paragraphs 21 to 23 of his judgment:

“21. I turn to the issue of time itself and the specific issue that cases of this kind invariably take a considerable time to manifest themselves notwithstanding alterations which may occur in the lives of the suspects. Examples of such cases are given by the JA and including Nazi crimes which still occur; prosecutions arising out of the Khymer Rouge experience in Cambodia are but examples. Upon the basis that time itself was to bar such prosecutions; they then they would not have taken place.

22. Perhaps the biggest single difficulty I have had in a determination of this case is represented by the clear issue as to why progress has not been made earlier. I take this to represent the main point taken by the RP under this head. It seems to me that I must factor the political situation that prevailed in former Yugoslavia in the years that followed these allegations. I naturally accept that this cannot be the responsibility of the RP who is entitled to take the point in opposition to the application. However there is no doubt that it is a reality which this court must bear in mind.

23. In strict factual terms these offences were reported in February 2005 and the investigation concluded in September 2007 with a red notice being posted the following year. Again, and is common in cases of this kind it was not until 2022 that the whereabouts of RP was discovered. I can find on the facts of this case no culpable delay on the part of the JA which could predicated a basis to cause this application to fail, the length of time from the commission of the offences notwithstanding.”

12. I do not consider this reasoning can stand. There is no evidence to support the point about the “...the political situation that prevailed in former Yugoslavia ...” and, in any event, while that might explain why the allegation against the Appellant were not made until 2005, it provides no logical explanation of events (or lack of them) from 2010. Further, the point that the Appellant’s whereabouts were not known until 2022 is contradicted by the letter dated 13 August 2019, and does not explain the apparent lack of activity between 2010 and 2018. Since I am satisfied that the District Judge’s conclusions on the passage of time were wrong I must consider the application of section 14 for myself.
13. In *Barber v Administrator Akrotiri and Dhakelia* [2021] 4 WLR 138, an appeal which concerned section 83 of the Extradition Act 2003 the counterpart to section 14, in Part 2 of the 2003 Act, I summarised the law as follows.

“4. The bar to extradition now contained in section 82 of the 2003 Act pre-dates that Act and is a long-standing feature of extradition law. In *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779 the House of Lords considered the meaning of the power of the court, then contained in section 8(3) of the Fugitive Offenders Act 1967, to order discharge of a person whose extradition was sought if extradition would be unjust or oppressive by reason of the passage of time. Lord Diplock explained the scope of the provision at pp 782–783, as follows:

“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. Delay in the commencement or conduct of extradition proceedings which is brought about by the accused himself by fleeing the country, concealing his whereabouts or evading arrest cannot, in my view, be relied upon as a ground for holding it to be either unjust or oppressive to return him. Any difficulties that he may encounter in the conduct of his defence in consequence of the delay due to such causes are of his own choice and making. Save in the most exceptional circumstances it would be neither unjust nor oppressive that he should be required to accept them.

“As respects delay which is not brought about by the acts of the accused himself, however, 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. So where the application for discharge under section 8(3) is based upon the ‘passage of time’ under paragraph (b) and not on absence of good faith under paragraph (c), the court is not normally concerned with what could be an invidious task of considering whether mere inaction of the requisitioning government or its prosecuting authorities which resulted in delay was blameworthy or otherwise.”

Lord Scarman agreed with Lord Diplock. Lord Russell of Killowen, while agreeing with Lord Diplock, added the following, at p 785:

“I would only add this comment on section 8(3)(b) of the statute. It is not merely a question whether the length of

the time passed would make it unjust or oppressive to return the fugitive. Regard must be had to all the circumstances. Those circumstances are not restricted to circumstances from which the passage of time resulted. They include circumstances taking place during the passage of time which may (as I think here) give to the particular passage of time a quality or significance leading to a conclusion that return would be unjust or oppressive."

5. In *Gomes v Government of the Republic of Trinidad and Tobago* [2009] UKHL 21; [2009] 1 WLR 1038, the House of Lords equated "unjust" as used in section 82 of the 2003 Act as extending only to a situation where the passage of time had rendered a fair trial impossible. Several authorities have considered the scope of what is "oppressive" for this purpose. One theme common to these judgments is that oppression is not synonymous with simple hardship. For example, delay without more will, in most instances, not justify a conclusion that surrender will be oppressive (see per Collins J in *Kila (Parfait) v Governor of HMP Brixton* [2004] EWHC 2824 (Admin) at [18]). There must be something more than mere delay. What the "something more" may be is not prescribed; whether it is present is a matter of evaluation based on the circumstances of the case in hand. While the category of matters which either alone or in combination may demonstrate that surrender would be oppressive is not closed, it is important to have well in mind that the standard required is demanding. That is the natural consequence of the statutory language. The conclusion that it would be oppressive to surrender a person when no other barrier to extradition is present will be a conclusion that will rarely be justified."

One point to add is at paragraph 31 of the judgment of the House of Lords in *Gomez*:

"31. The other main question discussed at some length during the argument is what approach should be adopted to the concepts of injustice and oppression within the meaning of section 82. This is, of course, touched on in the first sentence of Diplock para 1. And, so far as concerns oppression, it is worth noting too Lord Diplock's statement in *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, 784 that: "the gravity of the offence is relevant to whether changes in the circumstances of the accused which have occurred during the relevant period are such as would render his return to stand his trial oppressive ..." That said, the test of oppression will not easily be satisfied: hardship, a comparatively commonplace consequence of an order for extradition, is not enough."

14. In this case it is submitted that the passage of time “calls into question” “whether the Appellant will be able to receive a fair trial”. The Appellant does not deal with the allegations against him in any detail in his witness statement. He refers to having commenced national service in the Yugoslav People’s Army in March 1991. He says he was captured by the Slovenian police at the end of June 1991 and was then released. He explains that sometime after that, he fled to a Yugoslav army base and worked as a driver. He says that in October 1991 he was required to join the military police, and that this part of his national service ended in May 1992. He then refers to subsequent periods of conscription which lasted, he says, for months at a time. So far as concerns the allegations now made, the Appellant’s statement includes the following.

“21. In relation to the offences, I was not involved and did not commit them. In 2007 some of my friends told me I had been charged having found out online. On hearing this, I did not contact the authorities as I was still scared and knew I would not receive a fair trial as the mindset is still stuck like it was after the war.”

15. Based on the warrant and Further Information provided by the Requesting Judicial Authority, it appears that the case against the Appellant relies on depositions made by the four complainants. One further witness has died, and it is said that, in accordance with Croatian law, his witness statement will be read at the trial. The allegations made against the Appellant in respect of his involvement in each of the alleged assaults are particularised in the Further Information dated 11 August 2022. The complaints against him, therefore go beyond general allegations that he was part of a group that assaulted and injured the complainants. The offences alleged took place more than 30 years ago. Nevertheless, considering the information available in these proceedings, I do not conclude the present case is one where it has been shown, to use the formulation of the House of Lords in *Gomez*, that a fair trial would be impossible. The outcome of the prosecution in Croatia may well turn on how disputes of oral evidence on whether the Appellant was involved in the assaults are resolved. However, the Appellant raises no specific reason why the passage of time means that a fair trial of these allegations could not take place. Further, Croatia is a member state of the European Union, and Council of Europe state: absent evidence to the contrary, I should assume the arrangements in place for criminal trials including those concerning the assessment of oral evidence of events occurring many years before, are sufficient to ensure the fairness of the proceedings. There is no evidence to displace that assumption.

16. The next matter is whether the passage of time renders extradition oppressive. A long time has passed since the alleged offending. I accept there may be explanation for part of that period, until 2005 when the allegations against the Appellant were made to the police. This is not addressed in the evidence, but what is alleged against the Appellant is said to have taken place during a civil war; the part of that conflict referred to as the Croatian War of Independence did not end until 1995; and the civil war did not formally end until 2001. These circumstances provide some explanation why the allegations were not made to the police until 2005.

17. There is little explanation of why time has been allowed to pass since 2005. As set out above, although the indictment was issued in 2006 there is an extended period of unexplained delay after that, in particular, from 2010 when the order concerning the international search notice was issued. Nevertheless, the requirement in section 14 of the Extradition Act 2003, that it must be “oppressive” to extradite by reason of the passage of time, is a very stringent standard. The passage of time, of itself, will rarely if ever allow the conclusion that extradition would be oppressive. Instead, the focus must be on what it is that is consequent on the passage of time that might support such a conclusion. In this case, the Appellant points to the fact that at the time of the offences alleged he was young, 19 years old, and conscripted into the Yugoslav People’s Army. In the years since 1991 he has married (in 1993), raised two children (born in 1992 and 1995 respectively), and left Croatia for the United Kingdom (1999) where he claimed and was granted asylum (in May 2001), and was granted British Nationality (in 2004). Since 1999 the Appellant’s whole life and the lives of his family have been centred in the United Kingdom. The Appellant’s parents continue to live in Croatia, and the Appellant supports them financially. But that is the sum of his continuing connection with Croatia. At paragraph 24 of his witness statement for the extradition hearing the Appellant said this:

“The UK is my home; they have given me everything. My whole life is here and has been for almost a quarter of a century. It has given my children and me the opportunity to build a future.”

18. All this is significant and I will return to these matters in considering the Appellant’s article 8 ground of appeal. However, I do not consider these matters are sufficient to make good the submission that extradition would be oppressive. Extradition will significantly disrupt the Appellant’s life and the lives of his wife and children, but there is nothing in the circumstances of this case that elevates that disruption, serious though it would be, above the level of significant hardship. Extradition would not be oppressive.

19. For these reasons, the section 14 ground of appeal fails.

(2) Section 21A Extradition Act 2003: extradition not compatible with Convention rights (article 8)

20. The Appellant’s submission is that the District Judge was wrong to conclude that extradition would be a proportionate interference with article 8 rights. On appeal, the question is whether that conclusion was wrong in the sense explained by Lord Neuberger in his judgment in *Re B (A child)* [2013] 1 WLR 1911, from paragraph 90 and in particular at paragraphs 92 - 94.

“92. ... at least where convention questions such as proportionality are being considered on an appeal, I consider that, if after reviewing the trial judge's decision, an appeal court considers that he was wrong, then the appeal should be

allowed. Thus, a finding that he was wrong is a sufficient condition for allowing an appeal against the trial judge's conclusion on proportionality, and, indeed, it is a necessary condition (save, conceivably, in very rare cases).

93. There is a danger in over-analysis, but I would add this. An appellate judge may conclude that the trial judge's conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupported. The appeal must be dismissed if the appellate judge's view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).

94. As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or a white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge's decision was not based on his assessment of the witnesses' reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence, which are factors whose significance depends on the particular case. However, if, after such anxious consideration, an appellate judge adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal.”

21. The District Judge considered the article 8 submission using the balance-sheet approach recommended by the Divisional Court in *Polish Judicial Authority v Celinski* [2016] 1 WLR 551. At paragraph 32 of his judgment, the District Judge identified the matters on either side of the balance sheet as follows.

“32 ...

Factors against Extradition

- (i) the allegations in this case go back to October 1991 since which time the RP has established himself in the UK and has a wife and family to support.

(ii) the RP has settled work and has lived openly in the UK since his arrival in this country and successfully claimed asylum in May 2001.

(iii) the RP is not a fugitive.

(iv) the RP has a clean record in the UK and is in settled employment.

Factors in favour of Extradition.

(i) the weighty public interest in the UK adhering to treaty obligations.

(ii) the weight[y] public interest in ensuring that the UK does not become a safe haven for criminals.

(iii) the allegations in this case are of exceptional seriousness involving a series of allegations that the RP was involved in the perpetration of war crimes all be it during the autumn of 1991.

(iv) hardship will inevitably be caused to his family, but in my judgment, this reality does not outweigh the public interest in extradition in this most serious of cases.”

22. Taking the District Judge’s reasoning in the round, it is clear he placed great weight on what he referred to as “... the exceptional serious nature of the allegations made ... notwithstanding the time that has elapsed since their alleged commission” (at paragraph 31 of his judgment).
23. I have carefully considered the District Judge’s reasons but have concluded that his decision on the application of article 8 was wrong. The outcome of the article 8 issue in this case did not turn on the assessment of live evidence. There was no evidential dispute that concerns the matters relevant to the application of article 8. Rather, the outcome turned on evaluation of two matters: one, the significance of the passage of time, if not from 1991 when it is alleged the offending took place, then certainly from 2005 when the allegations were first reported; the other, the seriousness of the allegations that the Appellant faces.
24. I do not agree with the District Judge’s evaluation of the first of these matters. His reasons refer to the passage of the time but not to the lack of any convincing explanation for it, certainly in respect to the period from 2005. The only reference to matters explaining the passage of time is at paragraphs 22 to 23 of the District Judge’s judgment (in the context of the section 14 argument, set out above at paragraph 11). As I have said already, the conclusion at paragraph 22 of the District Judge’s judgment cannot stand, at least for the period after 2005, as it is unsupported by evidence. I have recited the sequence of events from 2005 above at paragraphs 4 – 10. The District Judge’s conclusion that there was no culpable delay was an inference

that was wrongly drawn. Whether delay is properly to be described as culpable depends on the circumstances: for example the nature of the offending alleged; the actions of the requested person; and any explanation provided by the requesting judicial authority. In this case, at least so far as concerns the period from 2005, there is nothing in the nature of the allegations made that explains the passage of time. The allegations are not complex, or allegations obviously likely to result in an investigation stretching over an extended period and, in any event, it seems very likely that the investigation was complete by the time the indictment was preferred in September 2007. Nor is the explanation for the passing of time to be found in anything the Appellant did. Even assuming the period between 2005 and 2010 can be disregarded as some steps were taken in that time albeit relatively slowly, the Requesting Judicial Authority has failed to explain the period from 2011. I am satisfied that the correct inference to be drawn is that there was culpable delay, at least from 2011.

25. This conclusion on delay affects the assessment of the seriousness of the alleged offending. The District Judge referred to the “exceptional seriousness” of the offending alleged. The offences alleged are undoubtedly serious. The allegation is that the Appellant participated in serious assaults. The offences are charged under article 120 of the Croatian Basic Criminal Code, the provision headed “War Crimes Against the Civilian Population”. That adds something to the seriousness of what is alleged, but it is important also to have in mind that when it is alleged these offences were committed, the Appellant was a 19 year old conscript. He held no position of command or authority. It is also striking that so little progress was made by the Requesting Judicial Authority over so long a period. I consider it is correct to infer from the lack of attention given to the case against the Appellant by the Croatian authorities, that the public interest in the extradition of this Appellant to face these charges is less strong than might otherwise be assumed.
26. The other factor in the balance is the extent of the family and personal life within the scope of article 8 on the facts of this case. The Appellant’s personal and family life in the United Kingdom is well-settled. He has lived and worked here for 25 years. His family has been with him throughout. These article 8 interests are weighty, and the Appellant’s extradition would be a significant interference with them. Taken together, these matters require the conclusion that extradition would be a disproportionate interference with those article 8 interests. I am satisfied that the District Judge’s conclusion on the application of article 8 was wrong. On my consideration of the matters within the *Celinski* balance, the article 8 ground of appeal succeeds.
27. Since the appeal will be allowed on this ground, I will deal with the two remaining matters more briefly.
- (3) *Section 13(b) Extradition Act 2003: prejudice at trial or punished, by reason of nationality.*
28. The Appellant’s submission is that the allegations against him are politically motivated: made and pursued because he is Serbian. This submission was raised at the extradition hearing, but not substantively pursued. At paragraph 14 to 15 of his judgment the District Judge stated as follows:

“14. I was informed at the commencement of the hearing that the RP had endeavoured to obtain expert evidence in order to support this aspect of this case. In the event this has not proved possible although RP has not formally abandoned or withdrawn this head of challenge.

15. Whilst I understand this approach the burden of proving the point remains on the RP as I have already identified and without such evidence in the way the law in its present form requires, I have no option other than to dismiss the challenge.”

29. In this appeal the Appellant relies on two documents that were available at the extradition hearing: a report published by Amnesty International in 2010 “*Behind a Wall of Silence Prosecution War Crimes in Croatia*”; and a document published by the UN High Commissioner for Human Rights on 2 December 2021 “*Preliminary observations from the Official Visit to Croatia by the Special Rapporteur on the Promotion of Truth Justice, Reparation and Guarantees of Non-Recurrence*”. The Amnesty International report states that a high proportion of the war crime prosecutions in the period 2005 to 2009 were brought against Croatian Serbs (83%) and that a very high proportion of those prosecuted (76%) had been members of the Yugoslav People’s Army or Croatian-Serb forces. The UN Special Rapporteur refers to this information and also refers to “discrepancies in sentences” as between defendants who are ethnic Serbs and others, although this latter point is not further explained. Considering this information in the round, I do not consider it is sufficient to make good the Appellant’s case under section 13(b) of the Extradition Act 2003. The position on the evidence at this appeal is the same as it was in the extradition hearing. The District Judge’s conclusion on this issue was correct. This ground of appeal fails.

(4) *The application to amend to rely on article 3*

30. The proposed article 3 ground of appeal was raised in an Application Notice dated 28 March 2024 and is to the effect that should the Appellant be imprisoned, whether on remand following surrender, or following conviction, at either Osijek Prison or Zagreb Prison, he would suffer article 3 ill-treatment because these prisons are overcrowded.
31. The first matter is whether there is a case to answer that surrender will expose the Appellant to a real risk of article 3 ill-treatment. For this purpose there is a presumption that Council of Europe states and European Union member states such as Croatia are willing and able to fulfil their obligation not to subject any person to article 3 ill-treatment. This presumption of compliance is strong and will prevail save where exceptional circumstances are demonstrated. The presumption of compliance can and will be displaced if there is clear and compelling evidence to the contrary.
32. I do not consider there is such evidence in this case. The Appellant relies on three sources. The first is the judgment of the European Court of Human Rights in *Vukusic*

v Croatia (Application No. 37522/16, published on 14 November 2023). Part of the complaint considered by the Court in that case concerned conditions at Zagreb prison. The Court concluded that overcrowding at Zagreb prison meant that the applicant had suffered article 3 ill-treatment (see the judgment of the Court at paragraphs 50 to 52). However, the complaint concerned events that had taken place between May and June 2011, and February 2012 and March 2013.

33. The second source the Appellant relies on is a report dated 23 November 2023, of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment (the CPT Committee) following its visit to Croatia in September 2022. The report noted that the occupancy rate at Zagreb prison was 151% and that overcrowding particularly affected remand prisoners. The CPT Committee stated as follows:

“41 ... the CPT has never considered that its cell-size standards should be regarded as absolute. In other words, it does not automatically hold the view that a minor deviation from its minimum standards may in itself be considered as amounting to inhuman degrading of the prisoner(s) concerned, as long as other, alleviating, factors can be found, such as, in particular, the fact that inmates are able to spend a considerable amount of time each day outside their cells engaged in purposeful activities ... The preventive approach of the CPT means that its aims to prevent situations that may result in violations of article 3 of ECHR arising. By not guaranteeing 4m² of living space per person in multiple occupancy cells, the Croatian authorities are on the cusp of subjecting prisoners to conditions which may be considered as inhuman or degrading. For this reason, the CPT recommends that the minimum standard of 4m² of living space per person be complied with.

In this respect, the situation observed in Zagreb Prison, where remand prisoners may be detained from months on end, confined to their cells with less than 4m² of living space, with no communal facilities and no purposeful regime except for 2 hours of outdoor exercise, raises clear issues under article 3 of the European Convention on Human Rights.”

The recommendations made by the CPT Committee included that “rigorous action” be taken to bring the prison population into line with the number of places available in the prison estate.

34. The third source relied on is a report by the Ombudsman for the Republic of Croatia dated 15 May 2023. The Ombudsman refers to overcrowding at Zagreb prison (151% occupancy) and at Osijek prison (168% occupancy). These figures are for 2021.
35. I do not attach weight to the circumstances considered by the European Court of Human Rights in its judgment in *Vukusic*. That information is more than 10 years old. The CPT Report and the Ombudsman Report both suggest very high occupancy rates at Zagreb prison. But there is no realistic prospect that the Appellant will be held at

that prison. Zagreb is 280km from Osijek, the Requesting Judicial Authority. It is possible that on surrender, the Appellant could be taken via Zagreb. But even if that happened, and even if he were held at Zagreb prison, the likelihood must be that this would be for a very short period pending an onward journey to Osijek.

36. The only information about Osijek prison is the occupancy figure in the Ombudsman's report. There is no further explanation why the occupancy rate at that prison is so high, or of the specific consequences of it for those held at the prison. The general impression given by the report is that overcrowding has been a long-standing problem across the whole Croatian prison estate. Set against this, Further Information provided by the Requesting Judicial Authority in a document dated 13 February 2024 is that when one prison is overcrowded, prisoners are transferred to other prisons. While therefore, there is evidence that suggests the possibility of overcrowding at Osijek, I do not consider the information available, even so far as it concerns that prison is sufficient to displace the presumption that Croatia will comply with article 3 minimum standards.
37. The application for permission to amend is therefore refused together with the accompanying application for permission to rely on the new evidence filed in support of the application for permission to amend.

C. Disposal

38. For the reasons above, the appeal succeeds on the section 21A ground of appeal – the Appellant's extradition would be a disproportionate interference with his article 8 rights. The other grounds of appeal fail, and the application for permission to amend to add the article 3 ground of appeal is refused. The outcome overall is that the appeal will be allowed and the warrant will be discharged.
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