



Neutral Citation Number: [2024] EWHC 2452 (Admin)

Case No: AC-2023-LON-000317

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 09/10/2024

**Before :**

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

<b>PATRICIA LAKATOS</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>FOUR HUNGARIAN JUDICIAL AUTHORITIES</b>	<b><u>Respondent</u></b>

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**Louisa Collins** (instructed by **Duncan Lewis Solicitors**) for the **Appellant**  
**Natalie McNamee** (instructed by **CPS**) for the **Respondent**

Hearing dates: 16 July 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10:30 on 9 October 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 Julian Knowles:**

### **Introduction**

1. This is an appeal under Part 1 of the Extradition Act 2003 (EA 2003). The Appellant's Notice was in proper form, however the order granting permission refers to permission to seek judicial review having been granted. This was plainly a slip, and so pursuant to my case management powers under the CPR and Crim PR, I treat the order as an order granting permission to appeal under Part 1 on all grounds. No party took a point on this, and the case was argued on that basis.
2. The appeal is brought against the extradition order made by District Judge King on 23 March 2023.
3. The grounds of appeal advanced by the Appellant depend in part on material that was not before the district judge. I considered this material *de bene esse* at the hearing.

### **Background**

4. These extradition proceedings have been brought as a result of four Part 1 warrants issued in Hungary. These are as follows.
5. Warrant 1 - Szy.5256201512: a conviction warrant dated 17 March 2017, issued by a judge of the Budapest Regional Court in Hungary. The warrant was certified by the National Crime Agency on 16 March 2021.
6. The Appellant's extradition is sought in order to serve a sentence of 6 years' imprisonment of which there is a period of five years and one day outstanding. This was imposed on 13 March 2015, ruled final and binding on 25 November 2015.
7. Box D indicates that the conviction was imposed in the Appellant's presence.
8. The conviction was imposed for one offence of robbery committed on 14 August 2012. It is said that the Appellant was part of a group who took advantage of the victim while she was unconscious, having consumed an unknown drink from a bottle provided by one of the co-defendants, and then stealing personal items from her flat, including cash and jewellery.
9. The Appellant was held in pre-trial detention between 28 November 2012 and 25 November 2013.
10. Warrant 2B - 7zv 3334/2020/17: a conviction warrant dated 13 October 2022, which replaced an earlier accusation warrant (hence my calling it Warrant 2B) concerning the same conduct. It was issued by a judge of the District Court of Pest in Hungary. The Part 1 warrant was certified by the NCA on 29 October 2022.
11. The Appellant's extradition is sought in order to serve a sentence of five years' imprisonment of which there is a period of four years, four months and eight days outstanding. This was imposed on 23 September 2020.

12. The conduct giving rise to the conviction regards 16 offences of fraud. There is a summary of the way the fraud operated given at box E as follows:

“From among the accused persons, the 1<sup>st</sup> accused HERSICS, Atilla rented the municipal rental apartment [address given] with his domestic partner, the 4<sup>th</sup> accused LAKATOS, Patricia; and this apartment was the temporary residence also for the 2<sup>nd</sup> accused LAKATOS, Maria and the 6<sup>th</sup> accused SZAUER, Szuszanna in autumn 2014. Additionally, the 3<sup>rd</sup> accused HORVATH, Veronika and the 7<sup>th</sup> accused ANDRASI, Sandor stayed in this apartment on a daily basis.

The accused persons decided June 2014 and November 2014 that they would try to make a financial gain from appropriating various valuables from elderly people who live in the area of Budapest, doing so by pretending to be police officers (and a doctor, in one case) and so entering the victims’ apartments on the grounds that some valuables threatened by theft in a currently ongoing criminal procedure needed to be surveyed; and then calling upon the victims to present the jewellery and cash in their possession, and then leaving with the collected valuables after diverting the victims’ attention.”

13. Thereafter, the specific instances of fraud/theft are set out on specific dates in June – November 2014. The Appellant was almost always acting as the look out while other members of the group were carrying out the distraction or attempted distraction.
14. Warrant 3 - 18.Bny.176320172: an accusation warrant dated 15 May 2017, issued by a judge of the Central District Court of Buda in Hungary. It was certified by the NCA on 16 March 2021.
15. The Appellant is wanted to face prosecution for an offence of ‘escape’. The Appellant was subject to bail conditions which included wearing a tagging device. She was under house arrest and not permitted to leave the address in question without permission. She is said to have removed it on 1 December 2015 and then left for an unknown place. This occurred during the investigation for offences of theft. She had been bailed on 12 May 2015 until 12 January 2016.
16. A domestic arrest warrant was issued by police on 19 January 2016 and approved by the prosecutor on 10 May 2017.
17. Warrant 4 - 3.Bny.15/2021: an accusation warrant dated 19 March 2021, issued by an investigative judge of the District Court of Eger in Hungary. This warrant was certified by the NCA on 16 April 2021.
18. The Appellant is wanted to face prosecution for four offences of fraud and one attempted fraud. The alleged offences involved the Appellant along with two accomplices making telephone calls from the UK to elderly victims in Hungary, pretending to be relatives who have been injured in car accidents, needing money to

pay for the damage or avoid court procedure. Other accomplices were operating in Hungary and obtained money and valuable items from the victims and then transferred the funds back to the UK, after taking a cut for their fee. On one occasion, the money was not obtained and is therefore classed as an attempt. These offences took place in December 2019 and January 2020. The stolen monies were retrieved through seizure.

### **Extradition proceedings**

19. The Appellant was arrested pursuant to the four warrants on 3 March 2022. An initial hearing was conducted on 4 March 2022.
20. As I have indicated the second of these warrants (an accusation warrant, Warrant 2) was replaced by a conviction warrant (Warrant 2B). She was arrested on that second warrant on the day of the final hearing (23 January 2023).
21. The Appellant has been remanded in custody since her arrest on 3 March 2022.
22. The extradition hearing took place on 23 January 2023. Extradition was ordered on all four warrants on 23 March 2023.

### **Grounds of appeal**

23. Pursuant to s 26 of the EA 2003, the Appellant appeals against the extradition order on the following grounds (Skeleton Argument, [26]):
  - a. Ground 1 (s 10): the district judge erred in concluding that the offence of 'escape' in Warrant 3 satisfies the dual criminality requirements and so is not an extradition offence as required by s 10.
  - b. Ground 2 (s 20): the judge erred in concluding that the Appellant will be guaranteed adequate retrial rights to satisfy the requirements under s 20(8) in respect of Warrant 2B. (Warrant 1 is also a conviction warrant but the Appellant was present at her trial so s 20 does not arise).
  - c. Ground 3 (s 21 and 21A/Article 3 of the ECHR): the judge erred in rejecting the argument that the Appellant's particular characteristics places her at a real risk of mistreatment contrary to Article 3 within the prison system because it what is said to be the undermining of the rule of law which cannot be adequately addressed through the assurance provided.
  - d. Ground 4 (s 21 and 21A/Articles 5 and 6): the judge erred in rejecting the argument that the Appellant is also at real risk of an unfair trial and deprivation of liberty contrary to Articles 5 and 6 on the basis of her particular personal characteristics which place her in a category vulnerable to discrimination, again because of a break down in the rule of law in Hungary.
  - e. Ground 5: (s 21 and 21A/Article 8): the judge erred in concluding that extradition would be a proportionate interference with the Appellant's Article 8 rights. This ground was predicated on there being further medical evidence, which in the event did not materialise. Ms Collins therefore put this ground on the basis that if any of

the warrants fell away, in particular on Ground 1, I should re-take the Article 8 balancing exercise for myself.

### **Powers of the High Court on an appeal under Part 1**

24. These are well-established and I need not set out the detail.
25. In summary: the appeal is brought under s 26; under s 27 I can allow or dismiss the appeal on the basis there set out (in essence, that the district judge should have answered a question arising under Part 1 at the extradition hearing differently and had s/he done so, they would have been bound to order the defendant's discharge). An appeal may also be allowed on the basis of an issue or evidence not raised before the district judge according to the conditions in s 27(4).
26. The general test on appeal is whether the district judge was 'wrong' on the issue concerned: see *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [22]-[26].
27. However, where fresh evidence is involved, or the law has moved on, or the offences for which extradition is sought have narrowed, I have to make my own assessment *de novo*, on the material as it now stands, in order to determine whether extradition is barred on one or more of the grounds set out in Part 1 of the EA 2003.
28. The *de novo* test in such cases is established by decisions such as *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26]; *Versluis v The Public Prosecutor's Office in Zwolle-Lelystad, The Netherlands* [2019] EWHC 764 (Admin), [79]; and *De Zorzi v Attorney General, Appeal Court of Paris* [2019] 1 WLR 6249, [66].

### **Submissions**

#### *Appellant's submissions*

29. On behalf of the Appellant, Ms Collins submitted as follows.
30. In relation to Ground 1, the conduct on Warrant 3 would not be an offence if committed in England and Wales. It therefore did not satisfy the dual criminality requirement in s 65(3)(b), which requires the conduct in question to 'constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom'. The district judge found that the conduct would amount to the English common law offence of escape from lawful custody, however Ms Collins said he was wrong to do so. She said the Appellant was not in lawful custody for the purposes of this offence. Her house arrest was not part of a punishment but a pre-trial condition. In equivalent circumstances in England she might have committed a breach of bail (which is not a criminal offence), but would not have committed an offence.
31. In relation to Ground 2, she said that since the extradition hearing took place, the Supreme Court handed down two decisions on s 20: *Bertino v Public Prosecutor's Office, Italy* [2024] UKSC 9 and *Merticariu v Judecatoria Arad, Romania* [2024] UKSC 10. These decisions were both handed down on 6 March 2024.

32. In light of these decisions, Ms Collins said that what the Respondent had failed to show is that the Appellant made an unequivocal waiver of her right to be present at her trial and so could not properly be regarded as having been deliberately absent. On the evidence before him, the district judge should not have concluded that this Appellant had sufficient awareness of the circumstances (ie, that she could be tried and convicted in her absence if she decided not to appear at the trial).
33. On Grounds 3 and 4, Ms Collins cited the well-known case-law on extradition under the ECHR. She based her submissions on material (including material not before the district judge) including from EU institutions which she said showed a continued undermining of the rule of law in Hungary which gives rise to a real risk of violations of the Appellant's rights under Articles 3, 5 and 6, and particularly so because she identifies as Roma and bisexual, evidence which the district judge did not reject.
34. In relation to Ground 5, Ms Collins submitted, briefly, that it would be a disproportionate interference with the Appellant's Article 8 rights if the appeal were to be allowed on the 'escape' point.

#### *Respondent's submissions*

35. On behalf of the Respondent, Ms McNamee submitted as follows.
36. In relation to Ground 1, she submitted that the district judge was not wrong. She accepted that a pure breach of a bail condition (such as breaking a curfew) is not an extradition offence. However, she submitted that the primary distinction drawn by the Appellant – the difference between house arrest as (in effect) a bail condition, and house arrest as a form of sentence or punishment (as was the case in *Estevez v Court of Mantua (Italy)* [2021] EWHC 2069 (Admin) – does not prevent a finding that dual criminality is made out in the circumstances of this case. There is no requirement for the English offence of escape from lawful custody that the person who is in 'lawful custody' is serving a term of imprisonment: someone who is remanded into custody awaiting trial can nonetheless escape from lawful custody (as she said is made clear in *Archbold 2024*, [28-166]: 'A person in custody on a lawful charge includes a person in lawful custody following arrest ... or in custody awaiting trial, sentence or serving a sentence ... or in transit to or from, or at, a prison, remand centre, court, etc'.) She said there was sufficient detail on Warrant 3 that the district judge had been entitled to conclude that the Appellant had been in lawful custody when she 'escaped'. The Appellant was not permitted to leave her residence at all without someone else's permission and so could be regarded as being in custody.
37. In relation to Ground 2 on Warrant 2, Ms McNamee accepted that the law had moved on since the hearing below (*per Bertino* and *Merticariu*) and that she needed to consider this ground afresh in light of these cases. However, she said it should nonetheless be dismissed. The judge's reasoning remained sound that the Appellant had deliberately absented herself from the trial, and in any event she will have a retrial in Hungary.
38. She submitted that this is the sort of case that was envisaged in [58] of *Bertino*, and that the Appellant's behaviour could be labelled 'extreme', given that the trial on

Warrant 2 took place after the Appellant had ‘escaped’ (per Warrant 3) and come to the UK. The Appellant properly can be found to have deliberately absented herself from her trial, notwithstanding her lack of actual knowledge of the scheduled date and place of the trial. In any event, Ms McNamee said both Warrant 3 and also Further Information from the Respondent shows that the Appellant will be entitled to a re-trial if she requests it on her return.

39. In relation to Grounds 3 and 4, Ms McNamee submitted that the issues raised by the Appellant have been comprehensively addressed – and rejected - in a number of recent decisions of this Court, namely: *Bogdan v Hungarian Judicial Authority* [2022] EWHC 1149 (Admin); *Nemeth and others v Hungarian Judicial Authorities* [2022] EWHC 273 (Admin); *Nemeth and others v Hungarian Judicial Authorities* [2022] EWHC 1024 (Admin); *Nemeth and others v Hungarian Judicial Authorities* [2022] EWHC 2032 (Admin); and *Horvath v Hungarian Judicial Authority* [2024] EWHC 499 (Admin). She said there is nothing in the material relied on by the Appellant in this case (including some material which post-dates the decision in *Horvath*, which was heard in January 2024) which could properly lead to a different conclusion.
40. In relation to Ground 5 she said that this should be rejected in any event, irrespective of the outcome on other grounds of appeal, given the length of time which the Appellant has left to serve in Hungary.

## **Discussion**

### *Ground 1*

41. It is common ground, as I have explained, that the question here is whether the conduct allegedly committed by the Appellant on Warrant 3 would have been a criminal offence had it been committed in England and Wales. That is the effect of s 10 read with s 64(3)(b) of the EA 2003. The only offence suggested by the Respondent which it could have amounted to is the common law offence of escape from lawful custody.
42. When considering those provisions and the issue of dual criminality, it is extremely important to appreciate that the focus is, as subsection s 64(3)(b) says, upon ‘the conduct’. It does not matter what precise label is attached by the requesting state to the conduct or offence in question. What matters is whether the conduct itself, which is described and relied upon, would constitute an offence had it been committed in England and Wales.
43. The precise conduct is described as follows in Box E of Warrant 3:

“By Order No. 36.Bny.1623/2015/2, dated 12 May 2015, the Central District Court of Buda ordered house arrest against Patrícia Lakatos and the compliance of the coercive measures was also ordered to be monitored with the technical device following the convict’s movements. This coercive measure was extended until 12 January 2016 for the last time by the Budapest Regional Court in Order No. 40.Bny.1506/2015/2, dated 11 November 2015. According to the

order, convict Patrícia Lakatos shall not have left her residence (H-1139 Budapest, Teve u. 47. I/3.) without permission. At 01:56 p. m. on 01 December 2015, the technical device following convict Patrícia Lakatos's movement (foot-shackles) indicated 'sabotage' as they were removed from the convict's leg. With this act, Patrícia Lakatos broke the provisions of the coercive measure taken against her, removed the technical device following her movement from her leg, and then, she left for an unknown place; the measures taken to find her were unsuccessful."

44. The Hungarian offence is categorised as 'escape' but, as I have said, that label is irrelevant.

45. The district judge said this at [55] of his judgment:

"I am satisfied, to (to paraphrase the definition of custody cited in *E v DPP*) Ms Lakatos's liberty being subject to such constraint or restriction that she could be said to be confined by the Central District Court of Buda because her immediate freedom of movement was under the direct control of that Court. Accordingly, her detention under house arrest was equivalent to being in lawful custody and in failing to adhere to the requirements of house arrest by removing the tag and leaving without permission she was escaping lawful custody."

46. In *Estevez*, Holman J summarised the relevant domestic law in relation to the English common law offence of escape from lawful custody as follows at [16]-[33]:

"16. Herein lies the difficulty in the present case. As I have said, the only analogue offence relied upon under the law of England and Wales is a common law offence. There is no statutory definition of the offence, whose boundaries would thus be clearly defined by the statute. It is only possible to determine the boundaries of the common law offence of "escape from custody" by reference to a collection of decided authorities, a number of which I will refer to, in *Archbold* at paragraph 28-166.

17. The principal current authority appears from that passage in *Archbold* to be *R v Dhillon* [2005] EWCA Crim 2996, in which the Court of Appeal Criminal Division gave judgment on 23 November 2005. It is not, in fact, possible to extract a precise ratio from the judgment in that case, because it is very clear from the latter part of the judgment, beginning at paragraph 22 through to the end of paragraph 29, that the essential basis upon which the Court of Appeal allowed the appeal against conviction in that case was that the summing-up had been extremely discursive and, frankly, very



confusing to any jury. Indeed, after quoting at some length from the summing up, the Court of Appeal said, at paragraph 27:

‘We are left rather breathless by this passage and remain concerned that the jury were not in any sense adequately instructed on the issues.’

18. Thus the outcome in *Dhillon* did not depend upon any precise description or characterisation of the common law offence, but turned upon that unsatisfactory and confusing summing-up.

19. However, earlier in the judgment, the Court of Appeal helpfully referred to a collection of authorities on this topic. At paragraph 21, which is in effect reproduced by *Archbold* at paragraph 28-166, the Court of Appeal said:

‘In our judgment, these authorities demonstrate that the prosecution must, in a case concerning escape, prove four things:

- (i) that the defendant was in custody;
- (ii) that the defendant knew he was in custody (or at least was reckless as to whether or not he was);
- (iii) that the custody was lawful; and
- (iv) that the defendant intentionally escaped from lawful custody.’

20. The focus of the difficulty in the present case is upon the meaning and effect of the words ‘in custody’ in that passage and indeed for the purposes of this common law offence generally.

21. Earlier, at paragraph 16, the Court of Appeal had cited an earlier authority of *E v DPP* [2002] EWHC 433 (Admin) in which the court in that case had stated:

“‘Custody’ was an English word which should be given its ordinary and natural meaning, namely ‘confinement, imprisonment, durance’, subject to any meaning given to it by statute. For a person to be in custody his liberty had to be subject to such constraint or restriction that he could be said to be confined by another in the sense that the person’s immediate freedom of movement was under the direct control of another...”

22. A little further on, in paragraph 18 of the judgment in *Dhillon*, the Court of Appeal referred again to the concept of ‘direct control’ in the context of citing another authority,

*Rumble* [2003] 167 JP 203. Between paragraphs 6 and 20 of the judgment, the Court of Appeal refer altogether to *E v DPP*, to which I have referred, *Rumble*, to which I have referred, and *H v DPP* [2003] EWHC 878 (Admin). This collection of authorities illustrates, in fact-specific contexts, situations in which courts have regarded a person as being in custody so as to trigger the common law offence when the person escaped or otherwise absented himself.

23. In *E v DPP* a person had been remanded to a local authority with a requirement that the local authority detain him in secure accommodation. It turned out that there was no such accommodation available and he was brought back to the Youth Court by a member of the Youth Offending Team, but he then absconded. To my mind it is clear that in those circumstances the person concerned was indeed in custody and under the direct control of another, namely the member of the Youth Offending Team who had brought him back to court. He had been remanded to secure accommodation, and it is of the essence of secure accommodation that, in accommodation of that description, a person is under the direct control of the staff and is, or should be, prevented from leaving by a combination of the staff and physical restraints, such as locks.

24. The judgment in *E v DPP*, as quoted in paragraph 17 of *Dhillon*, says:

‘Such a remand [viz in secure accommodation] was so restrictive of the appellant's liberty that it could properly be said to be custodial in nature.’

25. In *Rumble*, the defendant had surrendered to his bail at a magistrates' court. It happened that there was no usher or security staff present. Following imposition of a custodial sentence the defendant then escaped through the public entrance. The Court of Appeal clearly gave short shrift to a submission that he was not, at the material time, in custody so as to trigger the common law offence. Lord Justice Buxton said:

‘Once a person surrenders at the court as Mr Rumble did and was obliged by law to do, it will be very surprising indeed if the court's right to control him, and his vulnerability to the offence of escaping, depended upon the precise nature of the physical constraints imposed upon him.’

26. Again, it seems to me patent, as it did to the Court of Appeal in that case, that once the defendant had surrendered to bail and was actually within the court premises, he was under the direct control of the magistrate or magistrates who were dealing with his case that day, if of nobody else.

27. The third authority, cited from paragraph 19 of *Dhillon*, is *H v DPP* [2003] EWHC 878 (Admin). In that case, the court had remanded the defendant to local authority accommodation. Following that remand he was released from physical custody into the care of a member of the Youth Offending Team, who left him briefly unsupervised and told him not to move. The defendant then absconded and was charged with escape. The court stated:

‘In order to determine whether an order ... was custodial in nature, which was a question of fact, it was necessary to concentrate on the moment when it was alleged that the defendant absconded. In the instant case the justices had remanded him to local authority accommodation under section 23 without attaching conditions and that sanction gave power to the local authority to detain the defendant. He had been told not to move by the Youth Offending Team member so that it was unrealistic to suggest that he did not know he was being detained... In those circumstances there was ample evidence upon which the justices could have concluded that his immediate freedom of movement was under the direct control of the Youth Team member and that by absconding he was escaping from her custody.’

28. Again, in that case, one can clearly see that at the very moment of the absconding, power was being exerted by the Youth Offending Team member, albeit that she had temporarily left the defendant unsupervised.

29. All those cases clearly fall, as the respective courts held, on the side of the line of an offence being committed. An illustration of circumstances on the other side of the line is given in *Archbold* at paragraphs 28-166, where the editors state:

‘A person who is on bail is not in lawful custody and, therefore, does not commit the offence of escape if he absconds.’

-- and the authority of *Reader* is cited.

30. Similarly, it is stated in *Archbold* that --

‘Where a prisoner, on temporary release from prison, fails to return to prison on expiry of his release period, he could not be said to have escaped from custody and could not therefore be guilty of escape...’

-- and the authority of *Montgomery* is cited.

32. There is, therefore, a line, which may be very fact-specific, around which there may be a grey area. As I have already stated, the district judge required to be sure, and indeed I require to be sure, that the known facts of the present case do fall on the offence side of that line. It is not enough that they may be in a grey area.

33. Part of the difficulty in the present case may derive from the fact that English law does not as such have, or apply, a concept of ‘house arrest’. Anyone who reads the newspapers is familiar with ‘house arrest’ to which many people, often political activists, are subjected in various parts of the world, but we do not have that concept.”

47. Holman J gave his reasons for allowing the appeal at [34]-[39]:

“34. I have already quoted the description of the offence under EAW2 above. All that we know is that on the date in question, 10 October 2011, the appellant (as he is on this issue) "was in house arrest ... in compliance with a decision of the Supervising Court of Bologna..." The house arrest appears to have persisted for over a year, since the decision of the Supervising Court was dated 14 September 2010 and the "escape" was on 10 October 2011. Beyond that, we know absolutely nothing about the circumstances or conditions of the ‘house arrest’. We have no information as to the extent to which it was policed, or whether any official was exercising any form of ‘direct control’, or, indeed, any supervision or control at all over the appellant throughout that year and more of ‘house arrest’.

35. I have been shown today some questions which were submitted by the Extradition Unit here to the authorities in Italy on 9 April 2020. Some of those questions related to EAW1, but question 4 read as follows:

‘4. Finally, we would be grateful for some clarification regarding the offence of ‘escape’. How was the requested person made aware of the judgment of the Supervising Court of Bologna of 14

September 2010? What were the terms of the house arrest requirement?’

36. The only response to that question is a document from the Public Prosecutor's Office at the court in *Mantua*, dated 29 April 2020, to which I have already briefly referred. The only part of that document which in any way answers question 4 is a short sentence under a heading ‘Point 4’ on page 2 of the document, now at bundle page 151. There the Public Prosecutor states:

‘The count for the offence of breakout within the judgment by the court ... points to the fact that the order issued by the court supervising sentence enforcement of Bologna on 14 September 2010 was served on the convict on 15 September 2010; therefore, he had knowledge thereof. The convict was present when the decision was read out.’

37. That part of that document no doubt answers the question within the middle of question 4, namely ‘How was the requested person made aware of the judgment of the court of the Supervising Court of Bologna of 14 September 2010?’, but it simply does not give any ‘clarification’ whatsoever regarding the offence of ‘escape’. Further, and conspicuously, it does not in any way whatsoever answer the question: ‘What were the terms of the house arrest requirement?’

38. In this rather vague and unsatisfactory situation I am left very unclear as to exactly what were the terms, conditions or circumstances of the so-called ‘house arrest’. I am left uncertain as to the extent, if any, to which, by October 2011, the freedom of movement of the appellant could be said to have been "under the direct control of another". It seems to me that the situation so vaguely described in the present case is far from the situation in any of the authorities of *E v DPP*, *Rumble*, or *H v DPP*, and I cannot be satisfied that the ingredients of the common law offence which were identified and described by the Court of Appeal in *Dhillon* were all satisfied in the present case.

39. In my view, therefore, and with respect to him, District Judge Ezzat could not, or should not, have been satisfied that the requirements of the common law offence had been established in the present case ...”

48. I turn to my conclusions.

49. I have not found this issue easy to decide. As Holman J rightly noted, the issue is essentially fact specific, and there are grey areas. However, on balance, I have concluded that in this case the district judge was not wrong. My reasons are as follows.
50. This case is, I think distinguishable on its facts from *Estevez*. I consider that sufficient information was given in Warrant 3 to properly allow the conclusion that in equivalent circumstances in England the Appellant would have been in lawful custody according to the *Dhillon* criteria.
51. I agree with the Respondent that the issue is not that in *Estevez* the ‘house arrest’ had been ordered as part of a sentence, whereas here it had been ordered by way of a pre-trial restriction on liberty. In both cases the house arrest was court ordered. The real area of distinction is that in this case there are the details which the Respondent provided on Warrant 3 about what conditions the Appellant was subject to, which were notably missing in *Estevez*.
52. As I read Warrant 3, the Appellant was subject in Hungary to a court-ordered 24 hour electronically monitored curfew which required her to stay at the specified address and not to remove the monitoring equipment from her person. Also, and crucially, she could not leave that address without permission. I assume the Court’s permission, but I do not think the precise identity of the relevant person or body is crucial. For the purposes of the dual criminality exercise under the EA 2003, the Appellant is to be regarded as having in England: been subject to a court ordered 24 hour electronically monitored curfew at a specified address; and being subject to a condition that she could not leave it without someone else’s permission and could not remove the ‘tag’. She is therefore to be regarded as having been confined within the four walls of the address. The key point is that the need for permission meant that the Appellant was under someone’s direct control – because she could not leave her house without that person’s say so.
53. For these reasons in my judgment the district judge was essentially right in his analysis.
54. For the avoidance of doubt, I am not to be taken as saying that any defendant in domestic proceedings who is released on bail with a condition they comply with an electronically monitored curfew (eg, the typical night time curfew) commits the offence of escape if they break their curfew. This case turns simply turns on its own particular facts as narrated on Warrant 3.
55. I therefore reject Ground 1.

#### *Ground 2*

56. Section 20 of the EA 2003 provides:

“(1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence.

(2) If the judge decides the question in subsection (1) in the affirmative he must proceed under section 21.

(3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.

(4) If the judge decides the question in subsection (3) in the affirmative he must proceed under section 21.

(5) If the judge decides that question in the negative he must decide whether the person would be entitled to a retrial or (on appeal) to a review amounting to a retrial.

(6) If the judge decides the question in subsection (5) in the affirmative he must proceed under section 21.

(7) If the judge decides that question in the negative he must order the person's discharge.

(8) The judge must not decide the question in subsection (5) in the affirmative unless, in any proceedings that it is alleged would constitute a retrial or a review amounting to a retrial, the person would have these rights—

(a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required;

(b) the right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

57. The parties were right to say that matters have moved on since the hearing below by reason of the two Supreme Court March 2024 decisions in *Bertino* and *Merticariu*, which clarified the concept of being ‘deliberately absent’ in s 20(3) of the EA 2003.
58. Whilst both sides, quite understandably, quoted extensively from these decisions in their Skeleton Arguments, in particular in relation to the judge’s finding that the Appellant had deliberately absented herself in relation to the trial in Warrant 2, I consider that a complete answer to the ground of appeal is the one identified by Ms McNamee in [27]-[35] of her Skeleton Argument (her ‘fall back position’ as she described it). Even if the Appellant did not deliberately absent herself from her trial in the sense that term is now to be understood, in any event, it is beyond argument that she has the right to a re-trial as provided for in s 20(5) should she be returned to Hungary and ask for it, and hence overall the district judge was not wrong.

59. On the facts of this case, the Respondent has provided sufficient information to allow the Court to conclude that the Appellant's re-trial rights are guaranteed. That is on the basis of the following evidence.
60. Box D, [3.4] of Warrant 2 has been clearly endorsed, confirming that the Appellant has the right to a retrial or appeal, and not just the right to apply for a re-trial or appeal. The Warrant did not indicate the timeframe for applying for an appeal, and further information was sought to clarify this point.
61. The two questions asked (see the Request for Further Information (RFFI) questions dated 21 November 2022) were:

“(ix) Box D of the warrant states that Patricia LAKATOS will be expressly informed of her right to a retrial upon surrender to the judicial authority. I would be grateful if you could please confirm whether this means that Patricia LAKATOS has a right to a re-trial as per Article 4a(1) of the EAW Framework Decision [2009/299/JHA] with reference to Box D3 of the Warrant.

(x) What is the timeframe for Patricia LAKATOS to request a re-trial or re-hearing of the case against her?”

62. The answers to these questions were as follows:

“9. The Hungarian legal system guarantees that she can exercise her right to a retrial.

10. She can apply for a retrial at any time.”

63. I do not consider that there is any ambiguity arising from this evidence and no basis to go behind it. It makes clear that the Appellant's right to a retrial is an absolute one. As the Respondent pointed out, the response to Question 9 specifically uses the words 'guarantee' and 'right to a retrial'; and the reference to an application for a re-trial in Question 10 is in specific response to a question about timeframes for an appeal.
64. Ms Collins relied on *Merticariu*. In that case the Supreme Court said at [65]:

“65. In the EAW the issuing judicial authority did not tick the box under point 3.4 of point (d). Rather, it gave a legal pledge. However, the pledge did not state that the appellant was entitled to a retrial. Thereafter, the issuing judicial authority was asked to, but did not, confirm that the appellant had a right to a retrial: see paras 36-41 above. The only further information was dated 24 September 2020 in which the issuing judicial authority stated that the appellant could 'request the reopening of the criminal proceedings.' The further information did not



state that the appellant was entitled to a retrial. Accordingly, we consider that there is no evidence from the issuing judicial authority in the EAW or in the further information that the appellant would be entitled to a retrial on his surrender to Romania. Accordingly, the district judge ought to have answered the question in section 20(5) in the negative and should have ordered the appellant's discharge pursuant to section 20(7) of the 2003 Act.”

65. That case is, however, distinguishable, and not just because it concerned Romania and not Hungary. As the discussion at [31] *et seq* of the judgment shows, the information provided by the judicial authority in that case was different and less extensive than the information provided in the present case, and it did not clearly and unambiguously show the appellant would have the re-trial right required by s 20(5). It left the matter wholly unclear, and the Supreme Court so found. I do not find the evidence in the present case to be unclear. As I remarked during the hearing, if the relevant box regarding re-trial rights on a warrant is crossed – as it is in this case - then that is the end of the matter.
66. Hence, even if the Appellant was not deliberately absent, she has the required re-trial rights and so the district judge was not wrong to reject her s 20 challenge.
67. However, if I *had* had to decide the deliberate absence point, I would have concluded that the Appellant had indeed deliberately absented herself from the trial in Warrant 2 by reason of having escaped whilst on remand for it (per the offence on Warrant 3).
68. In *Bertino* the Supreme Court held that in order to prove deliberate absence, the judicial authority must prove, to the criminal standard, that there has been an unequivocal and intentional waiver of the right to be present at trial ([52]). It said that such a waiver must be ‘unequivocal and effective, knowing and intelligent’; this will normally require the judicial authority to prove that the defendant must have appreciated (or reasonably foreseen) the consequences of their behaviour, namely that the trial could proceed in their absence ([52], [54]). The Court said this would usually require proof that the defendant had been warned in one way or another ([54]). The Court rejected the previously-applied test of a ‘manifest lack of diligence’ on the defendant’s part as constituting sufficient proof. However, it also said that, ‘behaviour of an extreme enough form might support a finding of unequivocal waiver even if an accused cannot be shown to have had actual knowledge that the trial would proceed in absence’ ([58]).
69. The Court went on to give some examples (also at [58]) of what might constitute ‘extreme’ behaviour. These included: a public statement of an intention to avoid summonses; a successful attempt at evading arrest; or material demonstrating that they were aware of the proceedings against them and the charges they faced. These examples, ‘[point] towards circumstances which demonstrate that when accused persons put themselves beyond the jurisdiction of the prosecuting and judicial authorities in a knowing and intelligent way with the result that for practical purposes a trial with them present would not be possible, they may be taken to appreciate that a trial in absence is the only option.’

70. Hence, had I needed to do so, I would have concluded that the Appellant's conduct in this case was of a sufficiently extreme kind to satisfy this test. She committed a criminal offence in order to avoid being tried. The relevant material is summarised at [22] of the Respondent's Skeleton Argument. I agree that taken together, all of this material supports the view expressed by the Respondent at [5]-[6] of the Further Information that she was aware of the criminal proceedings against her as a result of the arrest, interview and coercive measures taken, and had intentionally and unlawfully absconded from prosecution.

71. Ground 2 therefore fails.

#### *Grounds 3 and 4*

72. There was no issue between the parties on the applicable legal principles either under domestic law or under the ECHR.

73. Extradition is barred under s 21 and s 21A of the EA 2003 where it would be incompatible with the defendant's Convention rights. As to when there will be such an incompatibility, in relation to Articles 5 and 6 the defendant must show there is a real risk of a flagrant denial of justice: see *Othman v United Kingdom* [2012] 55 EHRR 1, [233] (Article 5); *Soering v United Kingdom* (1989) 11 EHRR 489, [113] (Article 6). In relation to Article 3, the defendant must demonstrate substantial grounds for believing there is a real risk they will suffer treatment in the requesting state which violates Article 3: *Soering*, [91]. As is generally recognised, these are not easy tests to satisfy.

74. In the case of a request by a judicial authority of a member state of the Council of Europe which is also an EU Member state, there is a strong, but rebuttable, presumption that it will comply with its obligations under Article 3. If cogent evidence is adduced that there is a real risk that it will not, ordinarily in the context of something approaching an international consensus to that effect, extradition must be refused unless the requesting judicial authority can give, and if necessary secure from the relevant authority of its state, an assurance sufficient to dispel that real risk: see *Krolak v Polish Judicial Authority* [2012] EWHC 2357 (Admin), [4]-[7].

75. The question in this case is whether the material which the Appellant seeks to deploy satisfies any of these Convention tests. In my judgment it does not. In short, Grounds 3 and 4 cover ground which has been traversed extensively in recent years. The substance of the arguments now advanced has been rejected in the cases I mentioned earlier, and there is nothing in this case which can or should lead to a different conclusion. The reader is referred to those decisions for the context and background. I do not propose to repeat it.

76. The rule of law issue underpinning Grounds 3 and 4 was first dealt with in *Bogdan*. In that case I said as follows (the references are to the CJEU's judgment in *LM* [2019] 1 WLR 1004):

“15. The first step is to assess whether there are systemic or generalised deficiencies, by reference to the second paragraph of Article 47 of the Charter. This step must be conducted by

reference to two aspects: the first, which the Court [in LM] said was 'external in nature', concerns the functional or structural autonomy of the courts and their freedom from external interventions [63-64]. The second aspect, referred to by the Court as 'internal in nature', concerns impartiality, objectivity and the absence of 'any interest in the outcome of the proceedings apart from the strict application of the rule of law' [65].

16. The Court said that each aspect must be guaranteed by rules governing: the composition of the court; terms of service; appointment and dismissal; conduct and discipline of judges [66]. The requirement of independence also means that the disciplinary regime governing those who have the task of adjudicating in a dispute must display the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions [67].

17. At [68] the Court added that:

"68. If, having regard to the requirements noted in paragraphs 62 to 67 of the present judgment, the executing judicial authority finds that there is, in the issuing Member State, a real risk of breach of the essence of the fundamental right to a fair trial on account of systemic or generalised deficiencies concerning the judiciary of that Member State, such as to compromise the independence of that State's courts, that authority must, as a second step, assess specifically and precisely whether, in the particular circumstances of the case, there are substantial grounds for believing that, following his surrender to the issuing Member State, the requested person will run that risk ... (see, by analogy, in the context of Article 4 of the Charter, judgment of 5 April 2016, *Aranyosi and Caldaru*, C404/15 and C659/15 PPU, EU:C:2016:198, paragraphs 92 and 94)."

18. Article 4 of the Charter provides, 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'. It is the analogue to Article 3 of the Convention. In *Aranyosi* at [91]-[94] (reported in this country at [2016] QB 921) the Court addressed the position under the EAW Framework Decision where an extradition defendant claims that prison conditions in the requesting state violate Article 4 of the Charter:

"91. ... a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing member state cannot lead, in itself, to the refusal to execute a European arrest warrant.

92. Whenever the existence of such a risk is identified, it is then necessary that the executing judicial authority make a

further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing member state.

93. The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, with respect to detention conditions in the issuing member state does not necessarily imply that, in a specific case, the individual concerned will be subject to inhuman or degrading treatment in the event that he is surrendered to the authorities of that member state.

94. Consequently, in order to ensure respect for article 4 of the Charter in the individual circumstances of the person who is the subject of the European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing member state, he will run a real risk of being subject in that member state to inhuman or degrading treatment, within the meaning of article 4"

19. The general assessment referred to in [91] has come to be known as 'Aranyosi Stage 1', and the specific and precise assessment in [92] as 'Aranyosi Stage 2.'"

77. I accept that *Aranyosi* Stage 1 is satisfied in respect of Hungary, as I held in *Bogdan* in 2022. Ms McNamee understandably could not concede this, but did not argue against it. That said, however, there is nothing in the Appellant's particular case which suggests there has been or would be a violation of the Convention in her case, based on her particular factors, as suggested by Ms Collins.
78. I do not propose to go through, again, all of the arguments that have been made in relation to Hungary in the earlier cases I mentioned, and which are raised again in Grounds 3 and 4. They were comprehensively considered in those cases, as I have said. Fordham J in particular considered masses of evidence in his various decisions in the *Nemeth* line of cases, and was unpersuaded there was anything of substance in the arguments advanced. It is all there set out in very considerable detail.
79. Furthermore, nothing of any materiality has changed since I gave judgment in *Horvath* in March 2024 (hearing in January 2024) to alter the conclusions I reached, and which were reached in the other cases. In that case, in essence, I rejected the suggestion that the claimant should have been given further time to try and get evidence about the rule of law in Hungary on the basis that the material then being

proffered by her in support of the claim that there might be such further material just waiting to be discovered, was not tenable.

80. The main piece of evidence in this case relied on by Ms Collins which post-dates these decisions dates from 19 April 2024, when the European Parliament issued a Motion for a Resolution on the ongoing hearings under Article 7(1) TEU. In that Motion, the Parliament condemned the Hungarian Government for its failure to address the concerns raised in the 2022 Resolution that relate to fundamental rights [p7], including those of the LGBTQ+and Roma communities. The EU Parliament stated it was ‘appalled by the persistent systemic and deliberate breach of democracy, the rule of law and fundamental rights in Hungary, for which the Hungarian Government bears responsibility’ [p9].
81. I obviously do not for one second downplay what the European Parliament said, nor do I downplay the unpleasantness and unacceptability of any discriminatory treatment on any basis, but it does not come close to satisfying the relevant Convention tests. The Motion adds little or nothing to the existing material that this Court has considered before and found not to be sufficient to give rise to any Convention bar. I agree with the Respondent that it merely represents a continuation of the concerns which have been expressed by EU institutions about Hungary now for number of years, but which have not proved sufficient to cause this Court to intervene.
82. There is nothing in the Appellant’s ordinary offending which could give rise to any specific issue (as was the situation with the offending in *Lis* and in the other cases). Nor was anything to that effect suggested. She relied in instead on her personal characteristics. However, as already indicated, I do not accept that the Appellant has demonstrated any specific risk to her based on her Roma ethnicity or her sexual orientation, which were the two matters relied on. As to the former, for example, Fordham J said this in *Nemeth* [2022] EWHC 2024 (Admin), [9], where one of the issues was the treatment of Roma people. He said:

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

83. He went on to reject the applicants’ Article 3 claims.
84. For these reasons, and those set out in the Respondent’s Skeleton Argument at [51] et seq, I reject Grounds 3 and 4.

*Ground 5*

85. The Appellant having failed in her other challenges, there is no basis on which I could reach the conclusion that extradition would be a disproportionate interference with the Appellant's Article 8 rights. She is accused or has been convicted of a range of serious criminality which plainly outweighs anything in the balance the other way. I would have reached the same conclusion even if I had allowed the appeal on Ground 1.

### **Conclusion**

86. It follows that this appeal is dismissed.