Neutral Citation Number: [2025] EWCH 203 (Admin)

Case No: AC-2023-LON-001061

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/02/2025

Before :

MR JUSTICE DOVE

- -

Between :

ANDELKO MIKELIC

Claimants

- and -

THE COUNTY COURT IN ZAGREB, CROATIA

Defendants

- -
- -

Benjamin Joyes (instructed by Sperrin Law) for the Appellant
Amanda Bostock (instructed by CPS Extradition Unit) for the Respondent

Hearing dates: 21 November 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on Monday 3rd February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Dove:

1. The appellant is a national of Croatia. Whilst this matter has an extensive history, the direct subject matter of this appeal is the issuing of an arrest warrant ("AW") by the respondent judicial authority on 1 March 2022. The appellant is wanted for a judgment of the Municipal Court of Novi Zagreb on 30 May 2018, which was confirmed by the judgment of the County Court of Rijeka on 4th November 2020. A sentence of 2 years and 10 months was imposed of which the appellant still has 1 year 2 months and 7 days to serve.

2. The sentence relates to the appellant's conviction for tax fraud involving around £250,000. In 2009, after the commission of these offences, the appellant moved to the UK and settled here. Criminal proceedings were already on foot at the time when he left Croatia and in due course an arrest warrant was issued in January 2016. He challenged those proceedings and a hearing took place before DJ(MC) Coleman on 18 July 2016. Extradition was ordered and the appellant was removed to Croatia on 27 January 2017. In the course of her decision DJ(MC) Coleman found that the appellant was a fugitive and had left Croatia fully aware that he was facing these criminal proceedings.

3. Following extradition the appellant stood trial in Croatia and disputed the charges. He was convicted and sentenced whilst at court. It seems that he was released on bail and then summoned to prison to serve his sentence on 14 October 2021. He failed to respond to the summons and applied for a postponement. That application was refused and a further summons for him to attend prison was issued but he did not present himself, leading to the issuing of the AW. The appellant was arrested on 21 June 2022 and was produced at Westminster Magistrates' Court the same day and granted bail. The final hearing before DJ(MC) Clews took place on 11 January 2023 .

4. Before the judge, the appellant raised the sole issue of Article 8 of the ECHR. Having considered the evidence of the appellant the judge concluded that he was a fugitive. He observed as follows:

> "27. Factual findings: The principle issue is fugitivity. The **RP** agreed he left Croatia after his convictions but before his sentence. He may not have been prohibited from leaving but that does not prevent him being a fugitive. It is highly likely he anticipated a custodial sentence and did not wish to serve it. Leaving in those circumstances entitles me to find he is a fugitive, **Ristin v Romania** [2022] EWHC 3163 (Admin). It seems to me the only sensible conclusion that I can draw from the timing of his departure is that he wished to put himself beyond the reach of the Croatian authorities and did so. In the circumstances I am sure, to the criminal standard, he is a fugitive as per **Wisniewski v Poland**.
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> 28. It is difficult, if not impossible, to accept, without corroboration, the **RP**'s assertion he was assaulted in Croatia and that his life was in danger there.

> 29. Further, Mr Barrowcliffe is justified in making his submission that the information I have been supplied with does no more than establish the **RP** made an application to the Constitutional Court in Croatia, it does not establish there are ongoing proceedings there. If that was the case I would have expected to see more by way of documentation establishing that fact."

5. The appellant gave evidence at the hearing before the judge and explained that he was currently employed by The Little Way Association, which is a registered charity, and he worked as a caretaker. He was supported by his friend Ms Grcar who lives and works alongside him and who wrote a letter for the purposes of the hearing explaining that the appellant was a key member of the team which supported the charitable work of the association, and that he had been elected to the executive committee. He had in recent times had back problems which were being investigated and he had had an examination at hospital but the results in relation to that were still expected. In cross-examination the appellant confirmed that he is a single, divorced man with three adult children who do not live with him. He explained that his employment in the UK was central to his life. The appellant's medical records were produced for the hearing and they demonstrated that he had been investigated for his back pain and that the diagnosis was multilevel degeneration which would be best managed by exercise, physiotherapy and pain management.

6. In accordance with the approach endorsed by *Poland v Celinski* [2015] EWCA 1274 the judge set out the balance sheet of the factors for and against extradition in the appellant's case. The judge then set out his conclusions in relation to the Article 8 ground as follows.

> "40. Discussion of Article 8: I take account of the RP's state of health but any ailment or difficulty the RP has is relatively minor, not unusual for a man of his age and can be adequately managed by medication. It does not appear that he is likely to undergo surgery.
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> 41. Apart from the period when he was previously extradited he has been in the UK for a significant period and in that time he has built a life for himself here. However, in view of his circumstances there would be very limited interference with his, or anyone else's Article 8 rights if he was to be extradited. Certainly it is impossible to say that such interference will be at a high level, or exceptional.
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> 42. The offences of which he was convicted are serious and amount to a fraud totalling the equivalent of around £250,000 and there is no doubt the public interest in this case is, and remains, high. In those circumstances any counterbalancing factors would have to be truly compelling in order for the public interest to be outweighed by Article 8 considerations.
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> 43. It is unfortunate that the RP is being sought by Croatia for the second time. However, at the time of his previous extradition

> he had not been convicted of these offences. That cannot, in itself, be something that amounts to the RP's extradition being oppressive or disproportionate. If anything it heightens the public interest. The RP must have known or realised that Croatia would seek his extradition a second time if he failed to serve his sentence.
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> 44. Mr Brazell submits that Croatia could and should have investigated these matters more diligently and more swiftly but I simply do not have the information to be able to conclude they could, or indeed should, have done so. Often financial investigations are necessarily lengthy, involved and painstaking. With the seriousness of the allegations I cannot find the public interest has diminished to any meaningful extent due to any passage of time. It remains high and particularly so in the light of my finding the RP is a fugitive.
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> 45. I have been provided with a copy of Judge Coleman's judgement from July 2016 and whilst her findings are certainly not binding upon me, she found that the RP was a fugitive and that the Article 8 balance was, at that time, in favour of extradition. Of course, I acknowledge the circumstances surrounding the finding of fugitivity on that occasion were different but those findings, particularly on the Article 8 issue, serve to reinforce my own conclusions, which I make clear I have arrived at independently.
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> 46. I cannot say that such interference as there would be outweighs the very strong public interest in extradition. Additionally, as I have said, the UK cannot be seen as a safe haven for those who are wanted by other Convention signatories to stand trial or serve sentences for serious offences. Accordingly, I cannot decline to extradite the RP on Article 8 grounds."

7. The judge ordered the appellant's extradition. The appellant appealed initially on the basis that the judge's assessment of fugitivity and the balance to be struck under Article 8 was wrong. Permission was refused on this single ground by the single judge. The appellant renewed the application for permission to appeal, and then on 15 March 2024 applied for permission to amend the grounds of appeal at the renewal hearing to include a new ground based upon Article 3. On 20 June 2024 Sir Peter Lane sitting as a judge of the High Court granted permission to amend the grounds to include the arguments in relation to Article 3 and granted permission to appeal on both the Article 3 and Article 8 grounds.

8. The appellant applies to adduce fresh evidence in relation to the Article 3 ground principally on the basis that the two key pieces of evidence upon which the appellant relies were not available at the time of the hearing. The first piece of evidence is the decision of the European Court of Human Rights ("ECtHR") in the case of *Vukusic v Croatia* (37522/16) which was not published until 14 November 2023. The second piece of evidence upon which the appellant relies is the "Report to the Croatian

Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) from 19th to 29th of September 2022" which was published on 23 November 2023 ("the Report"). It was agreed that the court could examine this material without prejudice to the question of whether or not it was admissible in order to determine both the application to accept this fresh evidence and also the merits of this ground.

9. The case of *Vukusic* related to the conditions in which Mr Vukusic was held in the Diagnostic Centre in Zagreb prison between February 2012 and January 2013. It was accepted by the Croatian authorities that the claimant had at his disposal as little as 2.79 m² of personal space whilst held in this facility. The Croatian authorities also accepted that he had as little as 2.9 m² of personal space whilst he was housed at Split prison. These findings are recorded at paragraphs 47 and 48 of the judgement respectively. The court went on to undertake its assessment applying the principles established in the case of *Mursic v Croatia* (7334/13), noting that a serious lack of space in a prison cell weighed heavily as a factor to be taken into account for the purpose of establishing whether detention conditions were "degrading" from the perspective of Article 3. The court concluded as follows.

> "50. The Court notes that in Zagreb Prison the applicant had less than 3 m² of personal space for at least 152 days out of his 432 day detention there… The same holds true as regards at least part of his stay in Split Prison, where he was detained for 193 days…
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> 51. The Court has previously found violations in respect of issues similar to those in the present case (see *Mursic,* cited above, [151-153]; *Ulemek* cited above [127-131]; and *Lonic v Croatia* (8067/12) [74-78] 4 December 2014). Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of this complaint in the present case.
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> 52. There has accordingly been a violation of Article 3 of the Convention as regards the applicant's conditions of detention in Zagreb Prison and Split Prison."

10. The Report observes that at the time of the visit undertaken by the CPT in September 2022 there had been a significant increase in the prison population since the last visit in 2017 and noted that at the time of the visit the overall occupancy rate in the prison estate was 107%. At paragraph 29 of the Report it is noted that overall "prison overcrowding remains a serious problem in the Croatian penitentiary system, particularly in pre-trial detention and closed regime units." In particular, in relation to Zagreb Prison the report observed as follows.

> "Zagreb Prison, located in the Remetinec neighbourhood, consisted of a three-story complex with 10 departments. At the time of the visit, it was holding a total of 834 prisoners (501 remand prisoners, 159 convicted prisoners and 14 for misdemeanour offences) for a capacity of 552 places (representing an occupancy rate of 151%). In particular, the pre-trial population had practically doubled since the CPT's visit in

> 2017, when it stood at 251 prisoners. Of the current 834 prisoners, 34 were women (including 14 sentenced) located in department number 10 and 120 detainees were in the National Diagnostic Centre (NDC) (Department number five), which formally has a separate director and management."

11. Paragraph 40 of the Report notes that there had been improvements introduced since the previous visit of the CPT, but that nonetheless all of the wings accommodating remand prisoners, namely departments 1 to 6, were seriously overcrowded and, in principle, the standard cells of 19.5 m² accommodating between six and eight prisoners for 22 hours per day meant that most of the remand population was offered a living space between 2.5 and 3.2 m² each. This led to the CPT recommending that the Croatian authorities insured that no more than four remand prisoners were accommodated in a single multiple-occupancy cell at Zagreb Prison. They further required rigorous action to put an end to overcrowding in the prison estate.

12. The Report provided particular focus in relation to the National Diagnostic Centre in Zagreb Prison. Paragraph 43 of the Report provides as follows.

> "43. The condition in the 18 cells of the National Diagnostic Centre (namely, Department number five), were worse than the rest of Zagreb Prison, with higher occupancy levels (eight prisoners accommodated in 19.5 m²) and a poor state of repair and hygiene. The CPT recommends that the conditions of detention at the National Diagnostic Centre (Department number five) of Zagreb Prison be substantially improved in terms of state of repair and level of hygiene in cells and that occupancy levels be reduced to meet the required standard."

13. In a footnote to this paragraph it is noted that prisoners were in principle spending 30 days and more in such conditions and the management tried to transfer prisoners to other wings when occupancy levels in the cells reached eight persons. The Report noted that it was not surprising that the majority of complaints raised by detained persons related to the levels of overcrowding and poor material conditions in the cells.

14. The Croatian government provided a response ("the Response") to the Report dealing specifically with the points which have been raised by the CPT. So far as the material conditions in the prison estate were concerned the Response stated that the past three years had been extremely challenging for Croatia's penitentiary system due to the consequences of the Covid pandemic, as well as natural disasters such as earthquakes which had led to prisons needing to be evacuated and inmates rehoused. The response observed that the Ministry of Justice and Public Administration was continually striving to address the problem of prison overcrowding and improve the conditions of detention for those on remand and serving a sentence.

15. The Response rehearses a number of projects devised to secure additional capacity within the prison estate including longer term plans for the refurbishment of Zagreb Prison. In this connection the Response advised as follows.

> "43. As indicated in the replies to points 38, 40, 41 and 42 of the report, long-term plans will certainly include the refurbishment

> of Zagreb Prison, which is being prepared by all competent services. Since the National Diagnostic Centre in Zagreb is located in the same building, these adaptation plans apply equally to that organisational unit as well. Until this comprehensive refurbishment, the Ministry of Justice and Public Administration will provide (at the Centre's request) the resources for minor adaptations and maintenance, such as those undertaken in the accommodation units of the same building under the responsibility of Zagreb Prison. Furthermore, the adoption of new Indicative benchmarks for referral and allocation of prisoners executing prison sanctions, the introduction of assessment forms and tools, as well as the reorganisation of the assessment system currently carried out at the National Diagnostic Centre, will speed up the assessment process and the referral to sentence execution in penitentiaries and prisons, which will relieve the overcrowding at the Centre.
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> 44. As stated in the reply to points 38, 40, 41 and 42, the Ministry of Justice and Public Administration is aware of the need to respect the requirement of a minimum space of 4 m^2 per prisoner, i.e. the need to provide compensatory measures in cases where overcrowding does not allow this standard to be met for a certain period of time. The Committees report will be made available to the Supreme Court and to the courts responsible for executing prison sentences, including the supervisory judges responsible for Zagreb Prison (the Velika Gorica County Court). The issue of deciding on complaints from prisoners will also be discussed at regular annual meeting of supervisory judges, in which representatives of the Directorate for the Prison System and Probation also participate."

16. In the light of the appellant's medical history, on his behalf attention is drawn to passages in the Report which note that within Zagreb Prison Hospital there have been allegations of physical-ill-treatment of patients and "appalling conditions and neglect" were noted in relation to some psychiatric patients. As to other healthcare issues, the Report noted as follows.

> "54. The healthcare staffing complement at Zagreb Prison included several vacancies and currently consisted of the following members: one full-time GP, three contracted part-time GPs (a neurologist, a traumatologist and an orthopaedic surgeon for a total presence of 360 hours per month), to contracted part-time psychiatrists (for a total presence of 180 hours per month), eight nurses (at least three per shift and two weekends) and one pharmacy technician. Although a general practitioner was always present in the prison, including during weekends, such a component seemed rather insufficient for a large remand prison."

17. In the Response it is noted that in 2022 Zagreb Prison was authorised to recruit a medical doctor but the position was not filled because no person applied; the prison

was, however, able to recruit one nurse/medical technician as a result of the competition.

Article 3 and fresh evidence

18. The test for the court to apply when considering whether an appellant can succeed under Article 3 is whether it has been shown that there are substantial grounds for believing that the appellant would face a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country. If this test is satisfied there is an obligation under Article 3 not to extradite the appellant to the receiving country. This principle, and other general principles pertaining to Article 3 are set out in *Elashmawy v Italy* [2015] EWHC 28 at paragraph 49.

19. The context for the consideration of prospective violations caused by detention conditions was set out by the ECtHR in the case of *Mursic v Croatia* [2017]65 EHRR 1 in which they set out the principles as follows.

> "136. In the light of the considerations set out above, the Court confirms the standard predominant in its case-law of 3m² of floor surface per detainee in multi-occupancy accommodation as the relevant minimum standard under art.3 of the Convention.
>
> 137. When the personal space available to a detainee falls below 3m² of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of art.3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space.
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> 138. The strong presumption of a violation of art.3 will normally be capable of being rebutted only if the following factors are cumulatively met:
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> (1) the reductions in the required minimum personal space of 3m² are short, occasional and minor;
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> (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and
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> (3) the Appellant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention.
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> 139. In cases where a prison cell – measuring in the range of 3-4m² of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of art.3 will be found if the space factor is coupled with other

> aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.
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> 140. The Court also stresses that in cases where a detainee disposed of more than 4m² of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention referred to above remain relevant for the Court's assessment of adequacy of an Appellant's conditions of detention under art.3 of the Convention.
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> 141. Lastly, the Court would emphasise the importance of the CPT's preventive role in monitoring conditions of detention and of the standards which it develops in that connection. The Court reiterates that when deciding cases concerning conditions of detention it remains attentive to those standards and to the Contracting States' observance of them."

20. The appellant accepts that there is a general presumption that where a state is a member of the Council of Europe it will comply with its international obligations including those required by Article 3 of the ECHR. In *Jane v Prosecutor General's Office, Lithuania* [2018] EWHC 1122, the Divisional Court indicated in the judgment of Dingemans J (with which Hickinbottom LJ agreed) that the position could be expressed as follows.

> "17. Because of the principle of mutual trust between member states, membership of the Council of Europe is a highly relevant factor in deciding whether an extradited person would, in fact, be likely to suffer treatment contrary to article 3 if extradited to another member state, see *Targosinski v Poland* [2011] EWHC 312 (Admin) at paragraph 5. There is a general presumption that a member state will comply with its international obligations, including those arising from article 3 of the ECHR. That presumption may be rebutted be clear, cogent and compelling evidence, something approaching an international consensus, see *Krolik v Poland* [2012] EWHC 2357; [2013] 1 WLR 490 at paragraph 3. For example, if there has been a pilot judgment of the European Court of Human Rights ("ECtHR") against the requesting state identifying structural or systemic problems the presumption will be rebutted. Such judgments have recently been issued against states including Italy and the Russian Federation. Where the presumption is rebutted, the burden of proof shifts to the requesting state, which must, on the basis of clear and cogent evidence, satisfy the court that, in the case of the requested person, extradition will not result in a real risk of inhuman or degrading treatment."

21. In the event that the court is satisfied that the evidence rebuts the presumption that applies to a state that is a contracting party to the ECHR to the requisite standard, then

the correct approach is to seek further information from the Requesting Authority in order to ascertain whether the risk which has been identified still exists or whether it can be resolved. This procedure flows from the decision of the European Court of Justice in *Aranyosi and Caldararu v Generalstaatsanwaltschaft Bremen* [2016] 3 CMLR 13. In a domestic context the correct approach was set out in paragraph 30 of *Visha v Italy* [2019] EWHC 400 in the following analysis..

> "The approach to be taken in EAW cases where the executing court determines on the evidence that there is a real risk of a breach was set out in *Aranyosi* from which the following key points can be derived:
>
> (1) where an executing member state is in possession of evidence of a real risk of inhuman and degrading treatment for those returned to a requesting state an assessment of the risk must be made such that return does not result in inhuman and degrading treatment;
>
> (2) the executing member state must initially rely on information that is objective, reliable specific and properly updated on the detention conditions prevailing in the issuing member state and that demonstrates 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;
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> (3) however, a finding that there is a real risk of a breach of Article 3 in a requesting state as a result of the general conditions of detention cannot lead in itself to the refusal to execute a European arrest warrant;
>
> (4) the key issue is whether there are substantial grounds to believe in the case of a specific person before the court that there is a risk of an Article 3 breach;
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> (5) should such substantial grounds exist, the requested state must, pursuant to Article 15(2) of the Framework Decision, urgently request supplementary information as to the conditions the requested person will be detained in upon return;
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> (6) the request for information may include inquiries regarding national or international procedures in existence for monitoring detention conditions which make it possible for them to be assessed;
>
> (7) a time limit may be fixed for a reply taking into account the need to observe the time limit set down in Article 17 of the Framework Decision;

> (8) if, in light of the information provided, it is still found that a real risk of inhuman treatment exists then the extradition request must be postponed but it cannot be abandoned;
>
> (9) where a request for further information has been made, the executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end."

22. The appellant submits that, in accordance with the principles established in the case of *Hungary v Fenyvesi* [2009] EWHC 321 (Admin), the material in the form of the decision of the European Court of Human Rights in *Vukusic* and the Report should be admitted, firstly, because they post-date the decision of the judge and therefore could not have been relied upon at the time of the hearing on 11th January 2023, and secondly, because they are decisive in relation to the Article 3 arguments which the appellant advances. The first point is not disputed; the second point is the subject of contention.

23. The appellant contends that it is clear from the evidence that, upon return, he will be held at the Centre for Diagnostics in Zagreb Prison which has been the subject of significant criticism in both *Vukusic* and the Report. The grounds for concluding that the appellant would be held there are threefold. Firstly, the court in which the appellant was convicted was in Zagreb. Secondly, the conduct which is the source of the convictions occurred in Zagreb. Finally, the terms of the AW itself spell out on page 10 of the document, in relation to other circumstances relevant to the case, that "upon surrender of Andelko Mihelic he is to be escorted to the Centre for Diagnostics Zagreb, Zagreb".

24. On the basis that the appellant will be held at the Centre for Diagnostics in Zagreb Prison the appellant contends that it is clear from the new evidence that there is a real risk of a breach of his Article 3 rights. This arises on the basis of the findings of the court in *Vukusic* which comprise a finding that in the light of the conditions in which Mr Vukusic was held at the Diagnostic Centre and in Zagreb Prison there was in his case a breach of Article 3 as a result of the overcrowding in the facility. The evidence from the Report shows that in the Diagnostics Centre eight prisoners are being held in cells which are merely 19.5 square meters, leading to available space per prisoner of only 2.43 square meters.

25. Whilst the appellant accepts that these findings relate to the position some time ago, the appellant contends that the recent findings of the Report demonstrate that there has been no improvement in the conditions since then and similar breaches of Article 3 arise. This conclusion is based on a source of evidence, in the form of the Report from CPT, which is recognised as authoritative in *Aranyosi* at paragraph 89 in which the judgment provided guidance as follows.

> "89. To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the

> issuing Member State and that demonstrates 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. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN."

26. Furthermore, reliant upon this passage the appellant submits that the evidence is directly relevant to a particular place of detention, namely Zagreb Prison and more particularly still, the Diagnostics Centre there. Whilst the Response attempts to provide reassurance the reality is that its assertions are purely prospective, unspecific and do not provide any basis to conclude that the conditions which have been previously condemned in both *Vukusic* and the Report have been rectified.

27. The appellant also relies upon the reported conditions relating to the health care within Zagreb Prison on the basis that the appellant has complex health needs. Medical documentation records that the appellant suffers from positional vertigo and nerve damage, which affects his balance and mobility. In addition he has weakness in his lower legs caused by protracted degenerative disease including arthritis impacting on his spine. These conditions could not, it is submitted, be adequately treated and supported in Zagreb Prison given the poor condition of the medical facilities and the lack of qualified staff.

28. In response to these submissions the respondent contends that the evidence which the appellant relies upon is not sufficient to support a finding of a breach of Article 3. The material does not demonstrate that there has been a systemic failure in the prisons in Croatia and that there are widespread problems. This is particularly the case when considering the difficulties which the prison system in Croatia has had to contend with in the form of natural disasters and the Covid pandemic.

29. The evidence which the court relied upon in the case of *Vukusic* is now many years old and out of date. The evidence from the Report relates to the circumstances two years ago and the CPT did not suggest in the Report that the conditions in Zagreb Prison amounted to a breach of Article 3. Even at the time of the Report such overcrowding as was identified in the prison estate as a whole was marginal in extent. The respondent disputed that the appellant would be bound to be held in the Diagnostics Centre in Zagreb Prison: where the crime was committed and the court in which the requested person was convicted did not determine where they would be detained to serve their sentence. In any event, the principle difficulties in relation to overcrowding that the Report noted was in respect of remand prisoners and not the conditions of prisoners who had been convicted. Further, the report noted in respect of the Diagnostic Centre (as set out above) that prisoners "were in principle spending 30 days and more in such conditions and the management tried to transfer prisoners to other wings when occupancy levels in the cells reached eight persons".

30. The respondent relied upon the Response to demonstrate that there was a clear commitment to address any failings at the Diagnostic Centre in Zagreb Prison. Active steps were being contemplated to alleviate overcrowding and meet the concerns raised

in the Report. There was no reason to consider that the position was still the same now as had pertained at the time of the Report.

31. In relation to the points taken with respect to healthcare at the prison the respondent observes that the Report notes that there was a GP on duty at all times in Zagreb Prison and that there were also nurses constantly available. The pharmacy was well stocked and there were systems in place to ensure prompt and confidential access to a doctor. Given the nature of the appellant's conditions and the evidence provided by the Report there was no basis for any realistic concerns that the appellant's health could not be adequately and properly supported whilst he was held at the prison to serve his sentence.

Article 8

32. The appellant claims that the judge was in error when making a finding that the appellant was a fugitive. Firstly, in the Further Information which was provided by the respondent, it was noted that the appellant was held in pre-trial detention from the time he arrived in Croatia, having been earlier extradited on an accusation warrant in relation to these charges. On the 5th June 2018 the court rendered its non-final verdict by which he was sentenced to 2 years and 10 months imprisonment. Pre-trial detention was terminated on the basis that it was considered that the appellant would continue to be available to the court. The appellant was not under restriction. On the 14th October 2021 he was instructed by the court to report to the Diagnostic Centre in Zagreb and he filed a request for a postponement on the basis of ill-health but this application was rejected and he was instructed to attend and serve his sentence on 25th November 2021 but he never reported to either the court or the prison.

33. In his witness statement for the hearing before the judge the appellant states that he left Croatia at a time when the judicial authorities were aware of his residential address and phone number in this jurisdiction. Applications had been made to the Constitutional Court in Croatia in respect of his case and these remained outstanding at the time of completing the witness statement. When the appellant gave evidence at the hearing before the judge he reiterated these points and explained that he was still in contact with his Croatian lawyer and that he had been advised that the case would take two to three years to resolve.

34. The judge's conclusions of fact in relation to the appellant's case, and in particular whether the appellant was a fugitive, were set out in paragraphs 27 to 29 which have been set out above. At paragraphs 38 and 39 of the judgment the judge set out the factors in favour and against ordering the extradition of the appellant. The judge noted in his discussion of the Article 8 issues that there would be very limited interference with either the appellant's or anyone else's Article 8 rights if he were to be extradited: the interference would not be at a high level or exceptional. The offences for which the appellant was sought were serious and the fact that the appellant was being extradited for the second time, following his extradition to be tried for the offences, heightened the public interest in his extradition and reinforced that the appellant must have known or realised that his return would be sought if he failed to present himself to serve his sentence. The judge was unable to accept the submission that the offences ought to have been investigated more promptly as there was no evidence to support this suggestion. The judge took account of his finding that the appellant was a fugitive as a factor in support of the grant of extradition alongside the concern that the UK should not be seen as a safe haven for those who are wanted in other jurisdictions to serve sentences for

serious offences, as in the present case. In short, the judge found that the balance favoured ordering the extradition of the appellant. The ultimate conclusions of the judge were set out in paragraphs 40 to 49 which have been quoted earlier in this judgment.

35. In support of the submissions that the judge was wrong to find that the appellant was a fugitive reliance is placed upon the case of *Ristin v Romania* [2022] EWHC 3163, which had been referred to by the judge. In paragraph 29 of his judgment Fordham J distilled the conclusions of the three leading cases addressing in what circumstances a person can properly be regarded as a fugitive in the following terms:

> "29. I will describe the three cases in the trilogy. *Wisniewski* was a case about suspended sentences and their subsequent activation. The requested persons were found to have left the requesting state in circumstances which involved their knowingly preventing compliance with the conditions of extant suspended sentences. Specifically, that was because they left in breach of a condition requiring notification of an address (paras 64 and 69) and other conditions (para 66). The Divisional Court decided that they left as "fugitives" notwithstanding that they only became "unlawfully at large" later when the suspended sentences were activated (para 53). *Pillar-Neumann* was a case about declining to answer a summons to travel to, and appear in, the requesting state. The requested person had been in the UK *when they first became aware of the legal proceedings against* them in the requesting state. They had chosen to remain here and subsequently resisted extradition. The Divisional Court decided that this conduct did not constitute them a fugitive. They were not "evading arrest" (para 68) or knowingly placing themselves beyond the reach of legal process (para 70). Were it otherwise, the logic would appear to be that any requested person not submitting to arrest, by returning to the requesting state, would be a fugitive (para 72). *De Zorsi* was a case about returning home with permission to leave. The requested person's action in leaving France was "simply returning home" (para 57), "with the permission of the court" (para 55). The Divisional Court concluded that they could not in law be regarded as a "fugitive". The requested person had been in court at her trial in France in 2001 (para 50), had then returned home to the Netherlands after being told by the court that she was "free to leave France" (para 50), had been notified of her conviction and sentence (para 57), and unsuccessfully appealed (para 58), and had refused to answer the summons of the French court (para 59 to 60). All three of these cases recognise the core principle which asks whether the requested person has acted knowingly to place themselves beyond the reach of the legal process (*Wisniewski* para 59, *Pillar-Neumann* para 62, 64 *De Zorski* para 46ii)."

36. The appellant particularly emphasises the findings in the case of *Pillar-Neumann* at paragraphs 64 to 69 of the judgment of Hamblen LJ (as he then was). These paragraphs stress that it is not possible to be a passive fugitive and that where, as in the

circumstances of that case, the requested person has been living openly in the UK and subsequently proceedings are issued in the requesting jurisdiction there is no obligation upon that person to return to the jurisdiction and make themselves available to the judicial process or to serve a sentence. In those circumstances the person was not fleeing the requesting jurisdiction or taking steps to evade or avoid the judicial process. Nor had the person knowingly placed themselves beyond the reach of the judicial process. These characteristics were reflected in the appellant's case and the judge had been wrong to conclude he was a fugitive. The Croatian authorities knew where the appellant was and his appeal to the Constitutional Court reflected his continued involvement in the judicial process in Croatia. He had been corresponded with in relation to reporting to serve his sentence. His circumstances did not, therefore, have the qualities of fugitivity as identified in the authorities.

37. In addition to these points, the appellant draws attention to the fact that he has been the subject of an electronic curfew for two years and nine months whilst awaiting the outcome of these extradition proceedings and that he is, as set out above, subject to medical conditions affecting his quality of life. The offending with which these proceedings are concerned occurred many years ago. In the light of all of these factors the balance in the appellant's case should be recast in his favour.

38. These submissions are resisted by the respondent who emphasises that this is the second time that the appellant has been the subject of extradition proceedings and that he was present when he was convicted and sentenced, but had nonetheless decided to leave Croatia before serving his sentence. Having sought to have his imprisonment postponed the applicant was fully aware that the application for postponement had been refused. The application contained in the documents supporting the appellant's case and relating to his appeal to the Constitutional Court are inconclusive and of very limited value to the appellant. The reality was that the appellant had taken the deliberate step to put himself beyond the reach of the Croatian authorities and the judge was correct to conclude that he was a fugitive.

39. Turning to the other factors relied upon, the respondent submits that the judge was correct to conclude that there is nothing in the information about the appellant's medical condition which is unusual for a person of his age or which could not be addressed in a custodial environment. The fact that he had been subject to bail conditions was simply a reflection of the fact that he had demonstrated himself to be a flight risk and therefore these measures were required as a result of his previous behaviour. The delays in the case had been caused by the appellant absconding from Croatia. Ultimately, the appellant has very limited Article 8 rights and thus the conclusions of the judge were entirely appropriate.

Conclusions

40. Having considered the submissions made by the parties on both grounds, this judgment deals first by assessing the merits of the case made by the appellant in respect of Article 8. The principal feature which the appellant relies upon is the concern in relation to the judge's finding that the appellant was a fugitive. As is clear from the analysis of the authorities in *Ristin* set out above, the core question is whether having regard to the specific facts of this case the appellant acted knowingly to place himself beyond the reach of the legal process, in this case the execution of the sentence which had been passed upon him, in Croatia.

41. The circumstances of this case demonstrate, firstly, that the appellant was fully familiar with the extradition process, having previously been extradited for the purposes of his trial. Having been returned to Croatia and placed in pre-trial detention the appellant was then tried and convicted of the offences with which these proceedings are concerned. He was present for his trial, conviction and sentence. He was certainly aware of the sentence which had been passed and that, notwithstanding the time which he had spent on remand awaiting trial, there was still a balance of the sentence which was imposed to serve.

42. Whilst he was not the subject of restriction and the Croatian authorities were aware of his UK address, he nonetheless chose to move back to the UK at a time when he knew that a sentence was required to be served in Croatia since it had been imposed upon him in person. As Fordham J observed in paragraph 30 of *Ristin* the notion in *De Zorzi* of having left "with the permission of the court" (see paragraph 55 of *De Zorzi*) is distinct from simply the absence of a restriction on leaving the country. The key factual question is whether the actions of the appellant have the hallmarks of knowing and evasive relocation.

43. In my view the judge was not wrong to conclude that on the facts of this case the appellant was a fugitive. As noted, he was present when convicted and sentenced and fully aware that there was additional time to serve in his case, subject only to an appeal to the Constitutional Court which did not suspend or impact upon the validity of the sentence for which he is wanted. The reality is that the appellant chose to come to the UK knowing he had that sentence to serve, and sought to pursue his application to the Constitutional Court from abroad. His knowledge of the continuing liability to serve the sentence in this case was reinforced by his unsuccessful attempt to postpone the requirement to report to serve the sentence. In my view the judge was entitled to conclude that the appellant's conduct in leaving Croatia after being in court when convicted and sentenced could be properly characterised as a knowing attempt to evade his liabilities for these offences, and therefore he was not wrong to identify the appellant as a fugitive on the facts of this case. The facts of this case are far removed from those in *Pillar-Neumann* and *De Zorzi*, and much closer to those in *Ristin.*

44. In my view the judge's conclusions on the appellant's Article 8 case were robust and accurate. The starting point must be an examination of the nature and quality of the appellant's Article 8 rights in the UK. The appellant has no family life in the UK; he has a private life which he enjoys with friends and those with whom he works. The judge was therefore right to observe that these rights are not such as to carry significant weight in the Article 8 balance when compared, for instance, to the public interest in the UK complying with its international obligations and avoiding becoming a safe haven for criminals.

45. Whilst the appellant's medical conditions and the fact that he has been on an electronically monitored curfew for a significant period of time are all to be brought into account they were reflected in the balancing exercise which the judge undertook. Similar observations can be made in relation to the length of time that the appellant has spent in the UK without any criminal convictions: these are matters which should be and were reflected in the Article 8 balance. These factors are not, however, matters which in my judgment carry any more than little relative weight in the determination of the merits of the appellant's case. Overall, the balance which the judge struck was accurate and this ground of the appeal must fail.

46. Turning to the appellant's case under Article 3 the starting point is the presumption that the authorities in Croatia, as a contracting party to the ECHR, will abide by their obligations to respect the Article 3 rights of the appellant. The issue is whether, on the evidence and in accordance with the authorities, there is clear cogent and compelling evidence from an authoritative source that the presumption is rebutted and there are substantial grounds to believe that there is a real risk that this appellant's Article 3 rights will be breached.

47. In addressing these issues in respect of this appellant the first point is the question of where the evidence suggests he will be held upon his return to Croatia. This is because the focus of the appellant's case is not a systemic or generalised failure of the Croatian prison system but rather the conditions which have been recorded in Zagreb Prison and, still more particularly, the conditions in the Diagnostic Centre at that prison. The authorities are clear that the court should consider not only deficiencies which are systemic and generalised but also those which may affect certain groups of people or certain places of detention. The appellant is therefore entitled to focus in the way in which he does upon the evidence related to Zagreb Prison and the Diagnostic Centre it includes.

48. Whilst the respondent has submitted that it is not for certain that the appellant would be held at the Diagnostic Centre at Zagreb Prison, it seems to me that the evidence all points to it being the clear intention of the respondent to initially house the appellant in that facility. The three points relied upon by the appellant to prove that this is the intention, in particular the terms of the AW, are strongly probative. It also appears to me to be reinforced by the summons to prison referred to in the Further Information which required the appellant to report to the Diagnostic Centre. Although this has been the basis of the appellant's case since the grant of permission to pursue this ground, no information has been furnished by the respondent to gainsay what is in my view a clearly articulated intention, namely that it is intended that the appellant will, upon return, be held at the Diagnostic Centre in Zagreb Prison.

49. The question which then arises is whether, in the light of that finding, the court can be sure that he would face a real risk of a breach of Article 3 as a consequence of detention. Whilst the respondent is entitled to make the point that the findings in the case of *Vukusic* are now of some age, the difficulty for the respondent is that it does not appear on the evidence that there has been any material improvement in the circumstances at that facility since those findings were made. Indeed nowhere in the evidence is it suggested that there were improvements made after 2013 but prior to the deficiencies identified in the Report. The authors of the Report are a body of the Council of Europe and therefore an authoritative source of evidence in relation to the conditions in the Diagnostic Centre, and it is clear from the Report that there are significant and persistent problems of overcrowding in that facility. The Report provides evidence that the cells of the facility are occupied to an extent which breaches the space requirements needed to satisfy Article 3, and this deficiency is implicitly acknowledged in the Response which recognises the acute need for change in the conditions at that facility.

50. Although the respondent relies upon the content of the Response to the Report, in my view the appellant is entitled to observe that the contents of the Response in relation to Zagreb Prison are entirely aspirational, without any clear timescales, and without any evidence of what changes have been made to address the unacceptable overcrowding and poor state of repair and hygiene, in particular in the Diagnostic Centre, and with

what tangible impact upon the conditions in which prisoners are detained. The observations in footnote 43 to which the respondent draws attention are of no comfort in relation to these concerns. It refers to prisoners spending "30 days and more" in the Diagnostic Centre's overcrowded, poorly maintained and unhygienic cells, with no assurance as to resolution of the evident problems. Against this background in my view there is clear and compelling evidence which rebuts the presumption in this case based on the breach of the Article 3 rights of the appellant upon his return and detention at the Diagnostic Centre at Zagreb Prison.

51. The are two consequential issues which arise as a result of these conclusions. The first is that I am satisfied that the fresh evidence in the form of the judgment of the ECtHR in *Vukusic* and the Report should be admitted for the purposes of the appeal. For the reasons which have been set out above they are, in my view, of decisive importance in the merits of the appeal related to Article 3. The second matter is that, in accordance with the authorities, it is essential for the court to provide the respondent with an opportunity to provide further or supplementary information to the court to persuade the court that the risk of treatment in breach of Article 3 can be discounted. This is the approach set out and endorsed, for instance, in the case of *Jane* at paragraphs 43 to 47. The appropriate course as a consequence of the findings in this judgment is for this appeal to be stayed for a period of 42 days from the date of the handing down of this judgment to permit the respondent to notify the appellant and the court of any assurance that it is prepared to give in this case, following which the matter will be restored to the list. I give permission to apply thereafter in relation to the wording of any assurance and also the final disposal of the appeal.