



Neutral Citation Number: [2022] EWHC 259 (Admin)

Case No: CO/4668/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Wednesday 9<sup>th</sup> February 2022

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**MAREK KRYGER**

**- and -**

**REGIONAL COURT IN SZCZECIN**

**Amelia Nice** (instructed by Lawrence & Co) for the **Appellant**

The **Respondent** did not appear and was not represented

Hearing date: 9.2.22

Judgment as delivered in open court at the hearing

**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

**MR JUSTICE FORDHAM:**

1.

This is an in-person renewed application for permission to appeal in an extradition case. The Appellant is aged 26 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant issued on 21 April 2020 and certified exactly a month later. It relates to a 12 month custodial sentence all but two days of which remain to be served. The domestic Polish judgment imposing the sentence was dated 5 July 2017. It arose out of a trial scheduled for 27 June 2016. Extradition was ordered by District Judge Jabbit (“the Judge”) on 10 December 2020 after an oral hearing on 12 November 2020 at which the Appellant and his mother gave evidence. There was also written evidence before the Judge from the Appellant’s partner, whom the Appellant had met in 2018, and who was not required for cross-examination.

2.

Permission to appeal had previously been stayed on points of principle being argued in test cases which have now fallen away as a result of the adverse determination of those test cases. The Appellant had also succeeded in inviting this Court to stay the renewed application for permission to appeal on Article 8 ECHR grounds. Article 8 is the sole ground which is now before the Court. The question is whether it is reasonably arguable that the Judge was “wrong” to conclude that extraditing the Appellant to Poland would be compatible with the Article 8 rights of him and others affected. It is appropriate in my judgment, at least in this case, to have regard to the position as it is today and to posit this Court at a substantive hearing revisiting the Article 8 “outcome”.

3.

In her oral submissions Ms Nice for the Appellant has emphasised three topics in particular. The first is the question of fugitivity. As to that, her submission is that the District Judge failed to answer that question and ought to have included it in the Article 8 “balance sheet” exercise, as a feature against extradition, on the basis that the Appellant is not, to a criminal standard, a “fugitive”. The second is that the substantial passage of time since the Appellant’s failure to return (as required) in May or June 2016 through to the issuing of the EAW in April 2020 ought, in the light of the implications of the passage of time, to have weighed heavily in Article 8 terms (in undermining the public interest in support of extradition and in relation to the features weighing against extradition). The third feature is Brexit uncertainty. As to that, the submission is that it is now “clear” that the Appellant, if extradited, would face “real difficulties”. I was shown materials in support of these submissions: that this would be a referable case under the criteria governing referral to immigration enforcement; that the Appellant’s application stands to be treated as withdrawn if he leaves the UK, even forcibly by way of extradition; and that he would need to reapply if trying to come back here to rejoin his mother and brothers and partner here. The second and third topics – the passage of time and Brexit points – overlap in this sense. Ms Nice submits that, had extradition more promptly been pursued, the Appellant could have been gone back to Poland, served his sentence and then returned here, in time to avoid the brambles of the post-Brexit arrangements.

4.

Having regard to these features of the case, and the other circumstances of the case, and applying the threshold of reasonable arguability, I have reached the view that it is not reasonably arguable that this Court at a substantive appeal hearing would overturn the outcome in this case by reference to Article 8 proportionality considerations.

5.

In my judgment, Ms Nice is right to start with the question of fugitivity. She rightly recognises that the Judge did not include it, on either side, in the “balance-sheet” exercise. But, in my judgment, that cannot assist the Appellant in this case. Whether it is appropriate to infer, for the purposes of an extradition appeal, that a District judge has reached a conclusion on fugitivity will be a fact specific question. In the present case, the Judge said in terms: “I am satisfied, so that I am sure, that the main reason the requested person left Poland was to avoid his trial and its consequences”. That conclusion embodied a clear reference to the applicable criminal standard (“satisfied, so that I am sure”). In my judgment, beyond reasonable argument, that was a finding from which the irresistible consequence flows that the Appellant left Poland as a fugitive. He did so having left the ‘custodial centre’ in May 2016, to which he was required to return. That was in circumstances where his criminal trial was scheduled for 27 June 2016, of which he had - in person - been notified on 24 April 2016. All of this was put to him in cross-examination. In my judgment, the Judge unassailably found that the Appellant did leave Poland and come to the UK as a fugitive.

6.

This necessarily colours the position in relation to the passage of time. And that was precisely the point which the Judge made within the “balance sheet” exercise. Reference was made to the “delay”, and the “age” of the offences, but the Judge then said that that delay and age were “primarily because the requested person left Poland in 2016 knowing that he was to be sentenced, having admitted the offences”. The Judge rightly saw the circumstances of the Appellant leaving Poland as colouring the weight that could be placed on the passage of time. Having said that, the Judge rightly had regard to the circumstances so far as private life and family life and other matters were concerned. Among the features referenced in the “balance sheet” exercise were: that the Appellant has committed no offences in the United Kingdom since coming here in 2016; that he has changed his life; that he has been reunited with his family here, to whom he provides practical support; that he has been in steady employment; and that he has a partner who would suffer emotionally and financially. All of these are features arising out of the passage of time.

7.

The index offending to which the conviction EAW relates are three burglaries, stealing items having an aggregate amount of the equivalent of £2,500. These had been committed in October 2015. They are matters of seriousness, as is the 12 month custodial sentence, for which the Polish authorities seek to have the Appellant face his responsibilities, responsibilities which he previously acted knowingly to evade. There are strong public interest considerations in favour of extradition in this case.

8.

I cannot accept the criticism of the way in which the Judge listed the delay and age of the offences in the balance sheet exercise: what the Judge was doing was identifying that feature but explaining what heavily qualified it. In any event, and more importantly, if I posit the balancing exercise being revisited and recalibrated there is, in my judgment, no realistic prospect of the outcome being different.

9.

In truth, this is a classic fugitivity case in which the public interest considerations in favour of extradition decisively outweigh those against it. That includes the impact for the partner, and the family members, and the impact for their relationships with the Appellant. It also includes the post-Brexit difficulties - appropriately described on the Appellant’s behalf as real - as to whether he would be able to return to resume his life here with his partner and close to his family members. Those are

all factors which count against extradition, and they were recognised as such by the Judge. The Judge did not go into detail on the arrangements post-Brexit, and things have moved on. I have considered the materials which I have been shown. These were index offences committed while a relatively young person (aged 20) and I am rightly reminded of what the cases say about lives that are 'turned around', and about the lapse of time in a young life. However, as I have explained, and in agreement with Sir Ross Cranston who had (on the papers) refused permission to appeal, the public interest factors in favour of extradition - beyond reasonable argument - decisively outweigh those against it.

10.

For these reasons, permission to appeal is refused.

9.2.22