



Neutral Citation Number: [2023] EWHC 132 (Admin)

Case No: CO/729/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 January 2023

Before:

THE HONOURABLE MR JUSTICE MORRIS

Between:

MICHAL JENCZ	<u>Claimant</u>
- and -	
REGIONAL COURT OF POZNAN, POLAND	<u>Defendant</u>

The Appellant appeared in person
Hannah Burton (instructed by **CPS (Extradition)**) for the **Respondent**

Hearing dates: 19 January 2023

Approved Judgment

This judgment was handed down on Friday 27th January 2023 and by release to the National Archives
(see eg <https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html>).

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Mr Justice Morris:

1. This is an appeal against the decision of District Judge Callaway (“the Judge”) dated 22 February 2021 to order the extradition of Michal Jencz (“the Appellant”) to Poland. Permission to appeal was granted by Eady J on 24 August 2021. The respondent is the Regional Court of Poznan in Poland (“the Respondent”).
2. The sole ground of appeal now before the Court is that the Judge was wrong to have found that the public interest in extradition outweighed the Appellant’s private and family life in the UK under Article 8 ECHR.
3. The Appellant appears in person. Ms Hannah Burton of counsel appears on behalf of the Respondent.

The Factual Background

4. The Respondent sought the extradition of the Appellant pursuant to a Conviction EAW issued by the Respondent on 14 June 2018. The EAW was certified by the National Crime Agency on 19 June 2018.
5. The EAW seeks the Appellant’s return to serve 11 months outstanding from a sentence of 1 year and 3 months imposed on 28 April 2016 in respect to one offence of grievous bodily harm which took place on 30 December 2015. The Appellant had already served a period of custody between arrest and sentence. On 18 April 2017 a domestic arrest warrant was issued.
6. The Appellant had come to the UK in July 2016. He was arrested in the UK on 7 October 2020. He appeared before Westminster Magistrates Court on the following day. Whilst initially granted conditional bail, on 22 October 2020 at his request, he was remanded in custody to his extradition hearing.
7. The extradition hearing took place 22 January 2021 and extradition was ordered a month later when the Judge handed down judgment (“the Judgment”). The Appellant remained in custody.
8. Following the lodging of an application for permission to appeal, the Appellant was subsequently granted conditional bail on 8 April 2021. Conditions include a three hour electronically monitored curfew between midnight and 3am. He has therefore spent 6 months in custody during these extradition proceedings and a further 20 months subject to curfew.
9. In granting permission to appeal on ground 3 only, Eady J stated as follows:

“The Appellant questions whether the District Judge properly had regard to the time left to serve. Whilst in paragraph 1 of the Judgment, the District Judge wrongly refers to the original term as being one of 1 year 11 months, it is apparent that he understood that there was only 11 months left to serve and paragraph 2 makes clear that he was alive to the time the Appellant had already spent on remand. I do not consider the District Judge failed to have regard to this issue or that the decision reached was arguably wrong at the time Judgment was

handed down. That said I am mindful that the Appellant has remained in custody and further time has now passed. The appeal is to be stayed on Grounds 1 and 2 and it seems highly likely that the Appellant will have served almost all (if not all) of the remaining term by the time the stay is lifted. In the circumstances there is an arguable question whether extradition would remain a proportionate interference with the Article 8 rights of the Appellant and his family.” (emphasis added)

The Judgment

10. The Judge’s conclusions on Article 8 are at paragraphs 22 to 24 of the Judgment:

“22. The points concerning family life and the stress placed upon those concerned by an absent father/mother are all too common. It is often said that imprisonment of any length in whatever jurisdiction has adverse effects upon others who are not directly to blame. This case is no exception. The story articulated by the RP is said in many cases and I accept entirely that for the extradition to take place then a huge strain will be placed upon the wife and the 2 children in this case, from financial, social, emotional and practical perspectives. Of itself this does not make the extradition disproportionate from the point of view of Article 8.

23. The reality in this case is that the RP chose to leave Poland, chose to have a family and chose to set up life in the UK in the full knowledge that there was part of a sentence to serve in Poland which, by coming to the UK, he was avoiding.”

11. Then, at paragraph 24 the Judge carried out the *Celinski* balancing exercise, as follows:

“Factors against extradition

- (i). The fact that the RP has a settled life in the UK including a young family and was in settled employment.
- (ii). The RP has no convictions in the UK.
- (iii). The family will be under stress should the extradition take place.
- (iv). It is unclear when the RP will be able to return, he having no settled status in the UK.

Factors in favour of extradition

- (i). There is a constant and weighty public interest in extradition. The UK is required to honour its treaty

obligations and should not be a refuge for those who choose to flee in the expectation that they will not be returned to the country which seeks their extradition.

- (ii). The RP is a fugitive who came to the UK in the full knowledge that he had part of a sentence to serve in the RA.
- (iii). The conviction in Poland was serious by any standards involving the injuring of a person with long term and permanent consequence.
- (iv). The wife and mother in the case would have access to the benefit system in the event that she is unable to work.”

Relevant legal principles

12. I have been referred to a number of the leading authorities including *Norris v The Government of the United States of America* (No 2 [2010] UKSC 9; *Celinski v Poland* [2015] EWHC 1274 (Admin) citing *Belbin v Regional Court of Lille, France* [2015] EWHC 149 (Admin); *H(H) v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25; and *Love v USA* [2018] EWHC 172 (Admin). With these authorities in mind, I summarise the relevant legal principles.

Article 8 generally

13. As regards Article 8 ECHR, the test is one of proportionality. The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. That latter interest will always carry great weight. It is likely that the public interest in extradition will outweigh the Article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.
14. The gravity of the offence or culpability, the appropriate level of sentence and the arrangements for prisoner release are essentially matters for the requesting state. The court must conduct a balancing exercise in order to determine whether the requested person’s rights under Article 8 are outweighed by the public interest in extradition.

The approach on appeal

15. Ultimately the question for this Court on appeal is whether the decision of the district judge was wrong; i.e. whether the district judge’s overall evaluation was wrong, because crucial factors should have been weighed so significantly differently as to make the decision wrong. In an Article 8 case, where there is no question of fresh evidence, it is necessary to demonstrate that the district judge either (i) misapplied well established legal principles or (ii) made a relevant finding of fact that no reasonable judge could have reached on the evidence, which had a material effect on the value-judgement or (iii) failed to take into account a relevant fact or factor or took into account an irrelevant fact or factor or (iv) reached a conclusion that was irrational or perverse. Although the district judge’s reasons for the proportionality decision must

be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong (*Celinski* §24).

Time remaining to be served

16. As regards time remaining to be served, this may involve consideration of time already served, both in the requesting state and in the UK since arrest, time spent on bail with curfew restrictions and the possibility of early release in the requesting state.
17. The following points can be derived from *Molik v Poland* [2020] EWHC 2836 (Admin) at §11:
 - (1) The court must in principle respect the time left to be served and which is required by the requesting state authorities to be served there.
 - (2) The court does not evaluate whether sufficient time has been served; it is not for the English courts to form a view as to whether or not the person has served enough of his sentence.
 - (3) The position may be different if the court is satisfied that the early release provisions applicable in the requesting state would irresistibly have been applied to entitle the Appellant to immediate release on return.
 - (4) If there is “a very short period of time” remaining to be served that is capable of being a factor weighing against extradition.
 - (5) However, there is nothing inherently disproportionate in the surrender of the appellant to serve a sentence that amounts to a few weeks rather than months.
18. As regards time spent on curfew, the position appears to be that this is a factor which in principle can be taken into account, in the balance: see, for example *Gorak v Regional Court in Poznan Poland* [2022] EWHC 671 (Admin), at §28, where some account was taken of it, albeit not by way of direct credit against the period of imprisonment. In that case, the appeal was allowed in any event, on the basis of other factors weighing strongly against extradition.

The grounds of appeal

The Appellant’s case

19. By his Perfected Grounds of Appeal settled on 8 April 2021, the Appellant submits that the Judge’s overall evaluation of the factors relating to Article 8 was wrong. In particular the Judge failed to mention one of the most important factors in favour of the Appellant, namely the time that he has served on remand in the UK. At the time of the Judgment the Appellant had served 4½ months on remand. At the date of the filing the appeal he had served 6 months. He only had 5 months of his 15 month sentence left to serve. The Judge did not realise that the Appellant had served any of his sentence. He also wrongly stated the length of the overall sentence. If the Judge had properly taken into account the length of the sentence and the time he had already served, it could have tipped the balance in favour of his discharge.

20. Further, the offence in the EAW is the only one that the Appellant has been convicted of both in the UK and abroad. He came to the UK in 2016 and worked as a warehouse operative. He has been with his partner for nine years and the couple have two children, at that time, aged 2 and 3 years old. They have lived openly in the UK and the Appellant was earning around £1000 a month prior to his arrest. One of his sons suffers from blackouts which are subject to investigation and his partner suffers from arrhythmia and heart palpitations. As at April 2021 his partner was working two days a week. The Appellant did not have settled status in the UK and was in the process of instructing a Polish lawyer to apply to suspend the remainder of the sentence and withdraw the EAW. The Court would be informed of the outcome of this application.
21. In oral argument, the Appellant has added to, and updated, these arguments. First, he places emphasis on his settled family life in the UK. Secondly, he suggests that upon completion of his sentence in Poland, he might have to remain there longer because of difficulty he will have in obtaining a new ID card. Thirdly, he relies upon the fact that he has now been on electronically monitored curfew for the past 20 months. These last two points are new points raised for the first time in oral argument. Finally, in oral reply, he informed the Court that he would be unable to apply for early release in Poland and that he does now have settled status in the UK.

The Respondent's case

22. The Respondent resists these arguments in a detailed written skeleton argument, which I do not rehearse here. In oral argument, Ms Burton addressed the issue of curfew and concerns around the ID card. She also raised before the Court the position in relation to possible early release of the Appellant from his sentence in Poland.

Discussion

23. I am not satisfied that the Judge's conclusion was wrong – essentially for the reasons put forward by the Respondent.
24. As the Respondent points out, the public interest in extradition in this case is very high. There is a strong public interest in ensuring that those convicted serve their sentences.
25. First, as to the issue of time spent, the Appellant has spent 6 months in custody during these extradition proceedings which leaves a remaining 5 months still to be served upon surrender. A short period remaining does not render extradition inherently disproportionate: see *Molik* above. 5 months remains a relatively significant term of imprisonment. It does not tip the balance against ordering extradition.
26. The fact that 5 months remain to be served rather than 11 months does not now render the Judge's decision wrong. Eady J when granting permission appeared to be working on the basis that the Appellant was still in custody at that point in time: see paragraph 9 above. That was not in fact the case, as the Appellant had been released on bail in April 2021.
27. As regards the contention that the Judge did not take time into account spent on remand into custody at all, first, whilst he did not list it in the factors taken into account in the balancing exercise, I agree with the view of Eady J that it is clear from

the Judgment that he was aware, at the time, of the fact and amount of time which the Appellant had spent on remand in this country. Secondly, and in any event, the omission of specific reference to a particular matter does not render the overall assessment of proportionality wrong.

28. As to the Appellant's curfew, this has been raised in oral argument by the Appellant. There is no evidence before this Court as to how the Polish authorities would treat the time the Appellant has spent on curfew and whether it might reduce the 5 months to be served to practically nil (or indeed to any extent). This is a matter for the requesting state. It was for the Appellant in the first place to raise the issue supported by some evidence. Absent any evidence, I am unable to reach any conclusion as to the effect of time spent on curfew in relation to the time still to be served. Nevertheless it is capable of being a factor which can be weighed in the Article 8 balance. Here the additional restriction on liberty – 3 hours in the middle of the night – has been limited. In my judgment, on that basis, it is not a factor which, where the balance otherwise remains in favour of extradition, tips the balance against extradition.
29. As to the question of early release, again there is no direct evidence before the Court as to the prospect of the Appellant benefitting from early release upon return to Poland. Ms Burton has informed the Court that, in Poland, a person must apply to the Polish court for early release, and it is at the court's discretion. I accept that it is a matter of speculation as to what might happen in the Appellant's case. In fact, in reply, the Appellant stated that his understanding is that you can only apply for early release once every 6 months and that, in any event, he would not be able to apply because he has no proof of address in Poland and his ID has expired. It certainly cannot be said that in his case he would be entitled to early release such that he would be entitled to immediate release upon return.
30. Secondly the offending that gave rise to the sentence which remains to be served was serious violent offending.
31. Thirdly, the appellant is a fugitive, as the Judge correctly found him to be.
32. Fourthly, there has been very little delay in the matter. Where a person is a fugitive, very strong counterbalancing factors are required before extradition will be then be disproportionate. Such factors do not exist in the present case.
33. Fifthly, as regards his ID card, the Appellant appears to be raising an argument that the fact that his ID card has expired will inhibit or delay his ability to return to this country after he has served his sentence. It appears that his current ID card is in the possession of the police. But in any event he asserts that it has expired. By analogy with the position in relation to what has been called "Brexit uncertainty" set out in *Hojden v Poland* [2022] EWHC 2725 (Admin) at 59-60, in my judgment, if the Appellant wished to raise his immigration position as an issue to be considered in the Article 8 balance, then he had to do so in a way which was "fully formulated". However in this case the Appellant has not explained why, if his ID card has expired, this would cause difficulty in him obtaining a new one and, how, and to what extent, this might extend the period of separation from his family. This is not a matter which has been properly evidenced so as to amount to a further factor to counter the strong public interest in extradition in this case. In addition I note that, whilst earlier in these proceedings, the Appellant relied upon the fact that he did not have settled status in

this country, he has informed the Court today that he now does have that status, following the grant of bail.

34. Finally whilst the Appellant's family would be affected by his extradition, the evidence is that the family has managed in the past, whilst he was imprisoned for 6 months in this country and whilst he was imprisoned in Poland for 4 months prior to April 2016. The Judge took his personal circumstances fully and properly into account at §§22 to 24 of the Judgment.

Conclusion

35. For these reasons, I am not satisfied that the Judge's conclusion was wrong and this appeal is dismissed.
36. I thank the Appellant for the courtesy with which he has addressed the Court orally. I realise that this result will come as a disappointment to him.