



Neutral Citation Number: [2024] EWHC 204 (Admin)

Case No: CO/1158/2023;
AC-2023-LON-000312

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2nd February 2024

Before :

THE HON. MRS JUSTICE THORNTON

Between :

MONIKA FISEROVA

Appellant

- and -

DISTRICT COURT IN PRACHATICE
(CZECH REPUBLIC)

Respondent

Ms Louisa Collins (instructed by **HP Gower Solicitors**) for the **Appellant**
Mr David Ball (instructed by **the CPS**) for the **Respondent**

Hearing date: 23rd January 2024

Approved Judgment

This judgment was handed down remotely at 11.00am on Friday 2nd February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE THORNTON

Mrs Justice Thornton :

Introduction

1. The Appellant appeals the decision of the District Judge to order her extradition to the Czech Republic. The Appellant is wanted on an accusation warrant, in which she is accused of two offences:
 - i) One count of counterfeiting/alteration of money. This is an offence contrary to Section 233 Article 2 of the Czech Penal Code. It is punishable by imprisonment from 3-8 years.
 - ii) One count of fraud. This is an offence contrary to Section 209, Article 1 of the Czech Penal Code. It has a maximum sentence of 2 years.
2. The single ground of appeal is that the District Judge erred in concluding that extradition was compatible with the Appellant's right to a family life pursuant to Article 8 of the European Convention on Human Rights.

Background

3. The Judicial Authority seeks the Appellant's extradition on the basis of an extradition request issued on 18 August 2021. The request was issued after 31 December 2020 and therefore falls to be considered as a Part I arrest warrant governed by Title VII of Part 3 of the Trade and Cooperation Agreement and the Extradition Act 2020, as amended by the European Union (Future Relationship) Act 2020.
4. The extradition request was certified by the National Crime Agency as having been issued by a valid judicial authority on 28 March 2023.
5. The background is set out in the Arrest Warrant, and in further information provided by the Judicial Authority.
6. The allegation against the Appellant is, in summary, that on 3 January 2020, between 7pm-9pm, in Kubova, the Appellant handed over 17 counterfeit notes to the complainant, in payment of a debt. Each note had a face value of CZK 1,000 (approximately £33 each). At least eight of these notes had the same serial number. The Appellant handed the notes over knowing that they were counterfeited. She caused the complainant a loss of CZK 17,000 (approximately £560). The complainant put the money in her purse, and then only found out later at a petrol station that the money the Appellant had given her was counterfeit.
7. On 15 June 2020 the police served, 'into her own hands' a copy of the decision to charge her. She was questioned by police. The Appellant subsequently lost contact with the Czech authorities and it was considered that she had ceased to cooperate with the criminal investigation.
8. Further Information from the Judicial Authority describes how on 11 September 2020 she was 'checked' by the French authorities when attempting to come to the UK. Her son, who was then aged 13 was placed in foster care.

9. On 21 December 2020 a judge of the local court in the Czech Republic issued a domestic arrest warrant for her. The TACA Warrant was then issued on 18 August 2021 and certified on 28 March 2022.
10. In further Information from the Judicial Authority the Presiding Judge explains that the prosecution are seeking imprisonment of 54 months in the event of the Appellant being found guilty. The Presiding Judge considers that, 'at first sight such proposed punishment does not seem out of the ambit of law.'

The decision of the District Judge

11. The Appellant's evidence at the extradition hearing before the District Judge and summarised in his ruling is as follows. The Appellant came to the UK in around July 2020 (the date was provided by the Appellant's partner). Prior to coming to the UK the Appellant had been taking drugs regularly and had been in an abusive relationship. She has a son from an earlier relationship who was born on 29 January 2007. She describes how her partner beat her up in front of her son. For a time, her son lived with a friend. Her son now lives with her mother. The Appellant separated from her abusive partner and then entered into a new relationship with her current partner, Jachym Sulak. After being together for a few months they decided to come to the UK. The Appellant gave birth to a daughter with her partner on 27 November 2021. The Appellant subsequently had a miscarriage a year later on 30 November 2022.
12. In his ruling, the District Judge did not make an express finding on whether the Appellant arrived in the UK in July 2020, as per her partner's evidence or September, as per the Further Information. But he found her to be a fugitive on the basis she had taken a deliberate decision to place herself beyond the reach of the prosecuting authority.
13. The District Judge set out the provisions relating to proportionality and Article 8 between paragraphs 33-47 of his ruling. He then carried out a balancing exercise between paragraphs 48-49 and found extradition proportionate between paragraphs 50-51.
14. The District Judge identified the factors said to be in favour of granting extradition, namely: the public interest in the UK abiding by its extradition obligations; the relative seriousness of the criminal conduct involved; the Appellant is a fugitive from justice; she has limited ties with the UK. Factors in favour of refusing extradition were said to be: the Appellant says she arrived in the UK in 2020 and feels settled here; she says she has fixed accommodation where she resides with her partner and 15 month old child; the Appellant says she has lived a law abiding life since settling in the UK; the Appellant says she is not an fugitive from justice and the Appellant says that her criminal conduct is not so serious as would inevitably result in a prison sentence.
15. In concluding that extradition would not be a disproportionate interference with her Article 8 rights, the District Judge emphasized the importance of the UK's international extradition obligations. He characterised the alleged criminal conduct as 'not the most serious but is not trivial and in the event of a conviction a prison sentence may be imposed given her previous convictions.' The Appellant's links to the UK are limited and she has no settled status. She is a fugitive from justice. The District Judge said that he appreciated that there will be hardship caused to the Appellant and her partner

and their young child. This was not, however, sufficient. He considered that the Appellant's partner and young daughter may have to return to the Czech Republic where all of her family members live including her mother who is applying for custody of her son. He went on to find that the Appellant is highly regarded by her local church in the UK who may be able to help care for her daughter in the event her partner decides to stay in the UK. The Appellant is a fugitive from justice and there are no sufficiently strong counter balancing factors as to render extradition disproportionate. He acknowledged that there is some Brexit uncertainty but this did not affect the balancing exercise. He acknowledged that the Appellant had said that she has previously been the victim of domestic abuse in the Czech Republic which led to her having issues regarding substance abuse, which she had striven to deal with since coming to the UK.

The ground of appeal

16. On behalf of the Appellant it is said that the District Judge was wrong to conclude that extradition is proportionate with the rights of the Appellant and her family to a private and family life pursuant to Article 8 of the European Convention on Human Rights. In particular, it is said that the judge fell into the following three errors:
 - i) Gravity of offending: The Judge wrongly characterised the offending as serious when it should properly have been characterised as being of moderate severity at the highest. In the scheme of offending which comes before the extradition courts, this conduct falls at the lower end. The sentence sought by the prosecutor is not a reliable indicator of the seriousness of an offence. Rather the District Judge should have looked at the features of the conduct itself which is not sophisticated and does not involve any significant sums.
 - ii) Failure to attribute sufficient weight to the nature and length of separation of mother and child: The Judge failed to attribute adequate weight to the impact of the Appellant's separation from her baby daughter. He failed to acknowledge that the Appellant is the child's primary carer and has spent close to 24 hours a day with the child since birth. The child will not be able to understand her mother's absence.
 - iii) Transformation since coming to UK: The Judge failed to attribute any or adequate weight to the Appellant's transformation since coming to the UK. On her evidence, which he accepted, she was formerly in an abusive relationship which led her to drug dependency. Since coming to the UK, she has addressed her addiction and established a pro-social and law-abiding lifestyle. Her transformation is reflected in the support advanced on her behalf by her church community. This factor should have carried some considerable weight in the balancing exercise but the extent to which it was addressed by the Judge was inadequate.

Discussion

The legal framework

17. The legal framework and relevant legal principles were common ground. It was also common ground that the District Judge directed himself correctly on the law. The

challenge is to the Judge's application of the principles to the circumstances of the present case.

The role of the appellate court

18. As the appellate Court this Court may only allow an appeal if the first instance judge "ought to have decided a question before him at the extradition hearing differently..." and doing so would have required him to order the person's discharge (section 27(2) and (3) Extradition Act 2003). Simply put, the statutory test requires the appellate court to decide whether the decision of the district judge was wrong. The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed (Love v USA [2018] EWHC 172 (Admin), [25 – 26]). Counsel for the Judicial Authority directed the Court to the passage by Lord Neuberger in Re B [2013] 1 WLR 1943 at [93] on the role of an appellate court in considering questions of proportionality:

"93.....An appellate judge may conclude that the trial judge's conclusion on proportionality was i) the only possible view ii) a view which she considers was right iii) a view on which she has doubts but on balance considers was right iv) a view which she cannot say was right or wrong v) a view on which she has doubts but on balance considers was wrong vi) a view which she considers was wrong or vii) a view which is unsupportable The appeal must be dismissed if the appellate judge's view is in category i) to iv) and allowed if it is in category vi) or vii)".

Extradition and interference with family life

19. The relevant principles were enunciated by the Supreme Court in Re HH and PH –v- Deputy Prosecutor of the Italian Republic, Genoa: F-K (FC) –v- Judicial Authority [2012] UKSC 25.
20. The question is whether the interference with the private and family lives of the Appellant and members of her family is outweighed by the public interest in extradition. This is ultimately an exercise of judgment as to where the balance must be struck between two powerful and conflicting interests, namely the public interest in extradition and the private and family lives of the individuals involved. In this context there is a constant and weighty public interest in extradition. People accused of crimes should be brought to trial. The United Kingdom should honour its treaty obligations to other countries. There should be no "safe havens" to which an accused person can flee in the belief that they will not be sent back. The public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. 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. The impact upon family life is not to be considered only from the point of view of the person facing expulsion. The family unit has to be considered as a whole, and each family member has to be treated as a victim. The effect of extradition on innocent members of the extraditee's family might well be a particularly cogent consideration ([5], [8], [90], [150]).

The Article 8 balancing exercise

Inadequate consideration of the impact of separation on mother and child

21. In oral submissions, the main focus of criticism of the balancing exercise conducted by the District Judge was his assessment of the Appellant's separation from her 15 month old daughter in the event of extradition, which it was said, the Judge did not properly take into account. Reliance was placed on the analysis by Lady Hale in Re HH that the best interests of the children affected by extradition must be a primary consideration and such cases cannot be dismissed in a simple way [33 – 34].
22. The District Judge's reasons are concise but it is apparent that he has regard to the impact of extradition on the welfare of the family unit in acknowledging that extradition will cause hardship to the family (50(v) of his ruling). Nonetheless, he identifies that this is not a sole carer case and describes the Appellant's partner as 'clearly a caring father who takes a close interest in the upbringing of his daughter' (50vi). He considers the impact of extradition according to whether the partner and daughter return to the Czech Republic or remain in the UK. He identifies that all the wider family members live in the Czech Republic, including the Appellant's mother who is currently applying for custody of the Appellant's son who has lived with her for a number of months [50v]. He notes that the daughter had been looked after by members of her church during the hearing who appear to be offering support with childcare and makes the observation that the Appellant's father could try to make arrangements with church members to help with ongoing childcare arrangements whilst he is at work if he wishes to remain in the UK [50vi]. At the hearing before this Court, it was, broadly speaking, common ground that it may not be particularly realistic to assume that members of a church can provide stable and comprehensive childcare for a 15 month old child. However, the District Judge does not make such a broad assumption and acknowledges the limitations in this regard ("it may... be that...MS's partner can try to make arrangements with church members to help with ongoing child care arrangements while he is at work...(emphasis added)). Counsel for the Appellant emphasised the Appellant's preference for the family to remain in the UK but did not desist from the submission in response that the preferences of the family do not have any sort of overriding status in the Article 8 balancing exercise, albeit they are a factor to be taken into account.
23. It was submitted on behalf of the Appellant that the District Judge ought to have acknowledged that the Appellant spends 24 hours a day with her daughter and that a child of 15 months will not understand any separation consequent on extradition. The Appellant's proof of evidence does not however refer to her spending 24 hours a day with her daughter. There was no challenge to the District Judge's recitation of the salient parts of the evidence in his ruling. In this regard the Appellant's own characterisation of the impact of separation may be said to be modest: "My daughter is fully dependent on me as is Joachim, Neither he or I have any family here that can assist. We only have friends that we have made from attending the church".

The seriousness of the offending

24. On behalf of the Appellant it was said that the Judge wrongly characterised the index offending as serious when it should properly have been characterized as being of modest severity at the highest. Reliance was placed in the Appellant's skeleton argument on the relevant domestic sentencing guidelines for possession for articles in

use in fraud and fraud. It was said that, as regards the former guideline, the Appellant's offending was in the category of medium culpability and lesser harm with a starting point of a medium level community order and in the case of the fraud it would be medium culpability and harm of the lowest category (category 6) with a starting point of a low level community order. It may be noted, in this regard, that the Sentencing Council guideline on fraud does not contain a category 6 but it is assumed this was a typo (Counsel who drafted the skeleton did not appear at the hearing).

25. The District Judge characterised the alleged criminal conduct as “not the most serious to come before the Court” but as “not trivial”, going on to state that “in the event of a conviction in the UK for like criminal conduct a prison sentence may be imposed noting her previous convictions” [50(ii)] In setting out the factors said to be in favour of granting extradition he referred to the “relative seriousness of the criminal conduct .. as highlighted by the request by the public prosecutor for a sentence of 54 months to be imposed” [48 (ii)].
26. It was common ground that the approach to be taken to assessing the seriousness of the alleged offending is as set out in Miraszewski v Poland [2014] EWHC 4261 (Admin) at [36] by Lord Justice Pitchford. Conduct alleged to constitute the offence is to be judged, in the first instance, against domestic standards although, as in all cases of extradition, the court will respect the views of the requesting state if they are offered. The maximum penalty for the offence is a relevant consideration but it is of limited assistance because it is the seriousness of the requested person's conduct that must be assessed. The main components of the seriousness of conduct are the nature and quality of the acts alleged, the requested person's culpability for those acts and the harm caused to the victim.
27. In the present case, the requesting state has provided its views on sentence. By way of further information, it is said that the public prosecutor seeks a term of 54 months upon conviction. Furthermore, the view of the judge with responsibility for the case in the requesting state is that, “at the first sight, such proposed punishment does not seem out of the ambit of law”. This Court is required to respect this view (Miraszewski v Poland at [36]). In any event, the domestic sentencing analysis proffered on behalf of the Appellant does not take account of the Appellant's previous convictions, which include a previous conviction for fraud. The District Judge made specific reference to her previous convictions when concluding that a prison sentence might be imposed in the event of a conviction in the UK. The value of the sums involved in the offending is comparatively limited. However, as Counsel for the Judicial Authority submitted the mischief here lies less in the value, and more in the concept of being knowingly concerned with counterfeit money. Further information characterises the offence of counterfeiting as being of ‘high societal harm’.
28. In the circumstances, the Judge's assessment of the seriousness of the offending was measured and apt.

The Appellant's 'transformation' since arriving in the UK

29. On behalf of the Appellant, emphasis was placed on the Appellant's ‘transformation’ of her life since arriving in the UK. It was said that the accepted evidence is that the Appellant was formerly in an abusive relationship which led her to drug dependency. Since coming to the UK, she has addressed her addiction and established a pro-social

and law-abiding lifestyle. Her transformation is reflected in the support advanced on her behalf by her church community. It is said that the District Judge failed to give any weight to her transformation.

30. The difficulty with these submissions is that the judge acknowledged the Appellant's troubled history. He stated that; "I am also conscious of the fact that MF says she had previously been the victim of domestic abuse in the Czech Republic which lead to her having issues regarding substance abuse – which she has striven to deal with since coming to the UK". As to the adequacy of the weight given, the Court is not persuaded that this element should have been weighed so significantly differently, such that the Judge's analysis can be said to be wrong. There was limited evidence before the Judge in this respect. There were, for example, no third party character references from members of her church. It is apparent that the Appellant's mother is seeking custody of the Appellant's son. It is not suggested that the Appellant is at risk of a return to a violent relationship in the Czech Republic.

The wider Article 8 balancing exercise – was the Judge wrong to conclude extradition will not be disproportionate?

31. Turning to the wider balancing exercise, it cannot be said that the judge was wrong to conclude that extradition would be proportionate. The question for him was whether the interference with the family lives of the Appellant, her partner and daughter is outweighed by the public interest in extradition. The Appellant is a fugitive. The important public interest in preventing the UK from being a safe haven for fugitives will require very strong counter balancing factors before extradition can be considered disproportionate (Polish Judicial Authority v Celinski [2015] EWHC 1274 at [39]. There will be hardship to the family as a result of extradition but the consequences of the interference with family life will not be exceptionally severe (HH at [8]). The Appellant's daughter has a 'caring' father who is close to his family in the Czech Republic. The Appellant's mother is already looking after the appellant's son in the Czech Republic. Any leniency or mitigation to be afforded to the Appellant by virtue of her young child is not a matter for this Court, at this stage. In the words of Lord Hope in HH it is not open to the requested court, to question the decision of the requesting authorities to issue an arrest warrant at this stage.

"This is their case, not ours. Our duty is to give effect to the procedure which they have decided to invoke and the proper place for leniency to be exercised, if there are grounds for leniency, is Italy" [95].

32. Whilst the criminal conduct is 'not the most serious to come before the Court, it cannot be considered trivial. The Czech authorities have indicated an intention to seek a custodial sentence of 54 months, an indication which this Court must respect (Miraszewski v Poland at [36]).
33. The Appellant's ties to the UK are relatively limited. She arrived in the UK with her partner in July or September 2020. By December 2020 a domestic warrant was issued in the Czech Republic. Her family life in the UK has been established on a precarious basis. It is unclear from her evidence if she has settled status or not and there may be some Brexit uncertainty, but this cannot tip the balance against extradition (there is no dispute that the judge properly addressed the question of Brexit uncertainty at 50(vii))

of his ruling). Similarly, the fact that, to her credit, the Appellant has striven to put her troubled past behind her cannot, does not amount to a very strong counter balancing factor to outweigh the public interest in preventing the UK being a safe haven for fugitives from justice (Celinski at [39]).

Conclusion

34. For the reasons set out above, the appeal is dismissed.