



Neutral Citation Number: [2024] EWHC 2760 (Admin)

Case No: AC-2024-LON-000629

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 October 2024

Before :

MRS JUSTICE THORNTON DBE

Between :

Dagmara MILEWSKA

Appellant

- and -

Regional Court of Bialystok, POLAND

Respondent

Mary Westcott (instructed by **Sperrin Law**) for the **Appellant**
Laura Herbert (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing dates: 8 October 2024

Approved Judgment

This judgment was handed down remotely at 2pm on 30 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE THORNTON DBE

Mrs Justice Thornton DBE:

Introduction

1. Dąmbara Milewska (“the Appellant”) is a Polish national. She appeals against the order made by the District Judge on 21 February 2024 for her extradition to Poland, in relation to an arrest warrant issued on 18 May 2023, and certified by the National Crime Agency on 13 July 2023.

The arrest warrant

2. The warrant is an ‘accusation’ warrant. Surrender is sought to prosecute the Appellant in respect of two alleged matters (Box E of the warrant):
 - i. Between April 2021 and 12 November 2021, in various locations in Poland, the Federal Republic of Germany and the UK, the Appellant participated in an organised criminal group whose aim was to commit offences consisting of organised unlawful immigration from Belarus into Poland. She “organised the transport of illegal migrants by maintaining regular contact with persons in charge of the group and other members of the criminal group” and “personally” informed members of the group of the dates of the planned transport, “supervising and coordinating activities related to the transport and receipt of migrants, and participated in “financial settlements”.
 - ii. From “at least” 21 September - 12 November 2021, in various locations in Poland, the Federal Republic of Germany and the UK, the Appellant organised the crossing of no less than 195 migrants from Belarus into Poland.
3. Further information to supplement the warrant confirms that the Appellant is not a fugitive. She was not informed about the prosecution or questioned, arrested, or otherwise made aware of the allegations before leaving Poland for the UK.

Extradition proceedings

4. The Appellant was arrested pursuant to the warrant on 26 July 2023, and appeared before Westminster Magistrates’ Court the following day. Proceedings were opened and the Appellant was remanded into custody.
5. On 20 September 2023 the Appellant made a request pursuant to section 21B of the Extradition Act 2003 to answer questions in relation to the prosecution in the UK, under caution, if appropriate or for voluntary temporary transfer to Poland for interview or a court appearance. Her request was rejected by the Polish prosecuting authority on 03 October 2022. No reasons were given for the refusal.
6. The appeal hearing before the District Judge was heard on 24 January 2024. The Appellant opposed extradition on four grounds (particulars of the warrant; forum bar; Article 8 and proportionality). The District Judge rejected all grounds.
7. The Appellant is now subject to conditional bail, following an application made on 27 March 2024.

Grounds of appeal

8. Two grounds of appeal are advanced before this Court:
 - i) Extradition in this case would constitute a disproportionate interference with the Appellant's rights to a private and family life pursuant to Article 8 of the European Convention on Human Rights (ECHR). The District Judge was wrong in his overall conclusion on the issue and the way he reasoned towards it (Section 21A(1)(a) Extradition Act 2003).
 - ii) The District Judge failed to give clear reasons in finding that extradition would be proportionate pursuant to Section 21A(1)(b) of the Extradition Act and was wrong so to conclude.
9. Permission was granted on the papers for the challenge based on Section 21A(1)(a) Extradition Act (Article 8 ECHR) but refused on section 21A(1)(b) (proportionality). An application for permission to appeal is renewed in this respect.

Fresh evidence

10. When granting permission to appeal on the papers, the judge also granted permission for the Appellant to rely on fresh evidence in the form of:
 - i) A letter from Oxford City Housing dated 17 January 2024 indicating an intention to seek possession of the Appellant's home; and
 - ii) Extracts from a report from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published 2024, expressing concerns about remand prisoners in Polish prisons having insufficient contact with outside world.
11. In turn, the Respondent was permitted to rely on the Polish Government's response to the CPT report.
12. In addition, the Appellant seeks permission to adduce witness statements from the Appellant and her sister, updating the Court on developments in family life since the hearing before the District Judge.

The hearing before the District Judge and her grounds of appeal

The hearing

13. The District Judge heard evidence from the Appellant who explained she had come to the UK in March 2015, becoming a health care assistant in September 2016, before starting a nursing course in October 2022. He heard evidence from her daughter Wiktoria concluding that "it is apparent she is a fragile young woman with complex needs" (¶65).
14. The District Judge also heard evidence from a consultant forensic psychiatrist, Dr Chin who had prepared two reports for the Court on Wiktoria. The District Judge sets out the evidence from Dr Chin at ¶51 – 61, which may be summarised as follows:
 - a. Wiktoria has a personality disorder.

- b. She has a greater reliance on others, almost like a regression to her early years and struggles to motivate herself with basic functions. Her ability to cope with daily life is borderline.
 - c. The extradition of her mother would cause an emotional crisis and she would be likely to self-harm. There would be an acute presentation of psychosis and an urgent need for medical treatment.
 - d. The mental health support services available to Wiktoria are not well placed to support an individual with a personality disorder. This leads to a heavy dependence on family support which would be lost if her mother were to be extradited.
 - e. Dr Chin was concerned by the deterioration in her mental health that he had observed in Wiktoria outside Court who was exhibiting symptoms of paranoia. He considered it necessary to write to her GP to escalate her care and a review of her medication.
 - f. Wiktoria's presentation was genuine. She was not malingering.
15. In his ruling, the District Judge described Dr Chin as “an impressive witness” (¶50) who presented professional and detailed evidence and who gave “reasoned balanced answers”. His reports were “clear concise and provide a true insight into Wiktoria's difficulties” (¶50).

The District Judge's decision

16. The District Judge considered the issues in relation to Article 8 ECHR and proportionality (s21A(1)(b) were closely aligned, albeit they required separate consideration (¶108). Under a heading, “factors for extradition” he listed:
- a. The seriousness of the offending with a strong likelihood of a substantial prison sentence on conviction and the public interest in extradition (¶109/110).
 - b. A prospect that the difficulties faced by the Appellant's daughter could be dealt with by the NHS and supporting services (¶111).
 - c. The Appellant and Wiktoria have lived apart for several years whilst Wiktoria has suffered from mental health issues (¶112).
 - d. There is nothing to suggest it was inherently unreasonable for the judicial authority to have rejected the possibility of less coercive measures (¶113).
17. Under a heading “factors against extradition” the District Judge listed as follows (¶114-124):
- a. The impact on the Appellant's daughter is “exceptionally serious”. “This is an exceptional case”.
 - b. Whilst not trivial the allegations are not so serious as to be overwhelming in the balance.

- c. The Appellant is not a fugitive and has offered to cooperate with the judicial authority in the investigation.
 - d. Her remand in custody for a woman of hitherto good character was a shock and amounts to a substantial punishment not far beyond what might be expected on sentencing.
 - e. The impact of extradition on the Appellant.
 - f. The judicial authority have rejected the s21B request lodged by the requested person in a peremptory fashion and no reasons were given, this should trouble the court given that the requested person is of good character and prepared to cooperate with the investigation. That blank refusal should erode the public interest factor.
 - g. Aside from her mother there is no other real family support available for Wiktoria.
 - h. A despairing financial situation.
 - i. The risk of a lengthy pre-trial detention given the evidence of delays within the Polish judicial system.
18. The District Judge set out his conclusions at ¶125- 130 as follows:

“125. This was a very difficult balancing exercise, possibly the most difficult I have had to contend with since sitting within the extradition jurisdiction. On the one hand there are serious offences to be investigated here, Human Trafficking has impacted enormously within Europe over the last few years [and beyond] and the organised criminal groups operating cross border must be brought to account and sentenced in a way that will deter others from engaging in those activities. The sentencing regime is accordingly robust. There is, consequently, a weighty public interest in bringing those involved to justice and affording mutual respect and confidence to the international judicial authorities seeking a requested person to that end.

126. On the other hand, the RP is, on the face of it, a hard-working mother with no previous convictions studying to become a nurse, whilst working. She supports and cares for her adult daughter who is blighted with mental health issues. The RP states she is entirely innocent of the grave crimes she is alleged to be responsible for or involved with. She has volunteered to engage with the investigation including a voluntary transfer, a request that was declined without any real explanation, as Miss Westcott submits, a troubling response that should impact on the balancing exercise and erode the public interest factor.

127. It was apparent from observing Wiktoria that she is fragile and vulnerable, there was cogent and persuasive supporting evidence for that from Dr Chin who I found to be a compelling and highly professional witness. I have reflected on his evidence and what was said about the prospects for Wiktoria should the RP be extradited, it will undoubtedly have a significant impact upon her, her condition will inevitably deteriorate as it would for any dependant in such cases. I accept that whilst an adult the evidence suggests she is “childlike” dependant on her mother. Dr Chin has sent a letter to her GP to enhance the input and support she is currently receiving as a result of his concerns, this is an additional protective safeguard. His opinion is that she may self-

harm and have suicidal thoughts if the decision goes the wrong way but he could not determine the extent of that risk level, she has sought the help of available services previously and one would hope she would do so in the future. In her evidence she was clearly determined to finish her studying before making any decision about university or returning to Poland. This presented as a positive outlook for the future.

128. There will be an inevitable impact on the RP herself, no previous experience of a custodial setting and clearly upset and emotional as a result of being separated from her daughter and finding herself facing the prospect of a return in custody to Poland to face serious allegations she entirely refutes.

129. I have set out I hope in clear terms my views on this case, it is troubling and a difficult decision. Whilst I have come to the view that there are sufficient particulars, extradition offences and no Forum bar available there is still a very strong Article 8 submission in play, were the alleged offences less serious it may have tipped the balance in this finely balanced exercise in the RP's favour, however the offences are very serious and my view is that the public interest factor here outweighs the Article 8 factors against extradition.

130. I have considered all the factors I have to in terms of proportionality, they align closely to the Article 8 submissions and beyond. Again, a difficult balance to strike but one led by the offences alleged, just. I conclude it would not be disproportionate on these facts to order extradition and accordingly I order the extradition of Dagmara Magdalena Milewska to Poland pursuant to s 21 A (5) of the Extradition Act 2003.”

Submissions of the parties

19. On behalf of the Appellant, in relation to Article 8 it was submitted that the overall balance struck by the District Judge was wrong, in respect of some individual considerations, but also how they were weighed “collectively and cumulatively”. The District Judge failed to follow the Polish Judicial Authorities v Celinski [2016] 1 WLR 551 balance sheet approach. There were errors in the District Judge’s assessment of the impacts of extradition on the Appellant’s daughter, in particular he diluted the evidence of exceptional impact in his concluding assessment of the balancing factors. The District Judge also made errors in his assessment of the seriousness of the offending and failed to give sufficient weight to the Appellant’s willingness to co-operate with the prosecution including if necessary voluntary return to Poland. He failed to give clear reasons for his findings in relation to proportionality under section 21A(1)(b) Extradition Act. The appellant has spent time on remand and subject to bail conditions which raise the prospect of early release from Polish custody and the proportionality of extradition ought arguably to be assessed by reference to the provision of Article 597 of the Trade and Co-operation Agreement which refers to avoiding unnecessarily long periods of pre-trial detention.
20. On behalf of the Respondent it was submitted that the District Judge’s analysis of the impact on Wiktoria was an unimpeachable evaluation of the evidence. The District Judge was right to consider the constant and weighty public interest in extradition and correct to consider the offences as very serious and weighing heavily in favour of extradition. The District Judge did not misapply principles, make irrelevant findings of fact or fail to take into account relevant factors or reach a conclusion that was irrational or perverse. The District Judge heard the Appellant, her daughter, and live evidence

from Dr Chin. Other judges may have come to different conclusions but Article 8 ECHR is an evaluative assessment where reasonable judges may differ in their conclusions and in this case the District Judge's assessment could not be said to be wrong. The District Judge gave adequate reasons for rejecting the proportionality challenge and the submissions in relation to early release are too speculative. The argument that a different approach to proportionality is required under the Trade and Co-operation Agreement has been rejected by the High Court.

Statutory framework

21. Section 21A(1)-(4) of the Extradition Act 2003 provides that:

“(1) If the judge is required to proceed under this section (by virtue of [section 11](#)), the judge must decide both of the following questions in respect of the extradition of the person (“D”)—

(a) whether the extradition would be compatible with the Convention rights within the meaning of the [Human Rights Act 1998](#);

(b) whether the extradition would be disproportionate.

(2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.

(3) These are the specified matters relating to proportionality—

(a) the seriousness of the conduct alleged to constitute the extradition offence;

(b) the likely penalty that would be imposed if D was found guilty of the extradition offence;

(c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.

(4) The judge must order D's discharge if the judge makes one or both of these decisions—

(a) that the extradition would not be compatible with the Convention rights;

(b) that the extradition would be disproportionate.”

22. Section 21B(3) provides that:

“(3) A request under this subsection is a request by the person in respect of whom the warrant is issued—

(a) to be temporarily transferred to the requesting territory, or

(b) that arrangements be made to enable the person to speak with representatives of an authority in the requesting territory responsible for investigating, prosecuting or trying the offence specified in the warrant.”

23. Sections 27(2) - (4) of the Extradition Act 2003 provide:

“(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that:

a) an issue is raised that was not raised at the hearing extradition hearing or evidence is available that was not available at the extradition hearing

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person’s discharge.”

Discussion

24. I address the challenge under section 21A(1)(a) (Article 8 ECHR) first as this was the ground on which the Appellant was granted permission to appeal.

Relevant principles

25. The relevant principles were common ground. The question raised by a challenge based on Article 8 is whether the interference with the private and family lives of the Appellant and her daughter is outweighed by the public interest in extradition. This is 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. The public interest in extradition will always carry great weight, but the weight to be attached to it in a particular case does vary according to the nature and seriousness of the crime or crimes involved. The effect of extradition on innocent members of the extraditee’s family might well be a particularly cogent consideration (Re HH and PH –v- Deputy Prosecutor of the Italian Republic, Genoa: F-K (FC) –v- Judicial Authority [2012] UKSC 25. [5], [8], [90], [150]).

26. In an Article 8 case, judges should clearly set out an analysis of the facts as found, which should contain, in succinct and clear terms, adequate reasoning for the conclusion arrived at by balancing the necessary considerations. Ordinarily the judge, after finding the facts, should set out each of the "pros" and "cons" in a "balance sheet" followed by his reasoned conclusions as to why extradition should be ordered or the

defendant discharged (Celinski [15-17]). On appeal, the appellate court is not required to undertake a fresh determination. The review of the appellate court is to be conducted to decide whether the determination was “wrong”, not whether the appeal court might have come to a different decision (Love v USA [2018] 1 WLR 2889 [22-26]).

Application of the principles to the circumstances of the present case

Failure to follow the Celinski approach

27. On behalf of the Appellant, Ms Westcott first submitted that the District Judge failed to follow the approach required by the Court in Celinski. Instead of setting out the pros and cons of extradition, as he considered them to be, he simply recorded the submissions of the parties as to the pros and cons of extradition before setting out his conclusions. Even in the section on conclusions, it is at times unclear whether the District Judge is recording a submission or reaching his own finding. On behalf of the prosecuting authority Ms Herbert submitted in response that the list of pros and cons is to be read fairly as the findings of the District Judge.
28. It is unclear from the list of pros and cons at ¶109 – 113 whether the District Judge was simply recording submissions or making his own findings. He makes repeated references to “it is submitted” which suggests the former. If, as Ms Herbert submitted, the District Judge was recording his findings, then this does give rise to the concern expressed by Ms Westcott that the District Judge downplayed his finding that the impact of extradition on Wiktoria was “exceptionally serious” when conducting the balancing exercise. However, as Ms Westcott acknowledged, ultimately it is the substance of the District Judge’s analysis, rather than its form which matters and to which I turn.

Diluting the evidence of Dr Chin

29. Ms Westcott’s core criticism of the substance of the District Judge’s assessment centred on his evaluation of the impact of extradition on Wiktoria. There was, she submitted, a broad understanding at the hearing that the impacts of extradition on the daughter will be exceptional. Having unequivocally accepted the expert evidence of Dr Chin, the District Judge failed to reflect the expert’s analysis in his conclusions on the balancing exercise. Instead he “downgraded” or “diluted” the evidence of an exceptional impact and placed too much emphasis on isolated protective factors which did not reflect the balance of the evidence. In response Ms Herbert submitted that the District Judge’s analysis was an unimpeachable assessment of the evidence before him.
30. The District Judge summarised the evidence of Dr Chin at ¶51-61 of his ruling, which in turn are summarised at ¶14 above. The evidence makes for stark reading. Wiktoria has a personality disorder. She manifests a regression to early years in terms of her greater reliance on others. The extradition of her mother would cause an emotional crisis and she would be likely to self-harm. There would be an acute presentation of psychosis and an urgent need for treatment. Her mental health is deteriorating and requires an escalation of care and a review of her medication.
31. Ms Westcott took the Court to the two reports of Dr Chin and a note of his oral evidence before the District Judge. Ms Herbert confirmed that the note of evidence was not disputed. The District Judge heard the Appellant, her daughter and Dr Chin give

evidence and an appellate judge should think carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence. These are however factors, the significance of which depends on the particular case (Celinski at [21]). The District Judge described Dr Chin as an “impressive” witness. More particularly, for present purposes, he described his reports as “clear” “concise and providing “a true insight into Wiktorja’s difficulties” (¶50).

32. Dr Chin’s reports and the note of his oral evidence explain that Wiktorja’s personality disorder developed as a result of early life attachment issues - her father went to prison when she was very young. She has become reliant on her mother to care for her. There is “ample evidence” that Wiktorja struggles with symptoms of a personality disorder which is described by the International Classification of Diseases as including frantic efforts to avoid real or imagined abandonment; a pattern of unsuitable and intense interpersonal relationships; a tendency to act rashly leading to potentially self-damaging behaviour and recurring episodes of self-harm. Dr Chin described it as a condition which persists in all aspects of Wiktorja’s life and affects her day to day (¶45). Dr Chin continues as follows:

“46. Although a diagnosis of borderline personality disorder does not make her dependent on her mother per se; the complicated nature of her personality difficulties and how her relationship with her mother has developed so far, Miss Zmuda has become reliant on her mother to care for her.

47. Her disorder does not erase her capabilities when it comes to looking after herself – cooking for herself, cleaning and etc.; in short, she would be able to do these things without her mother but her mood instability has impacted on her energy levels and motivation to such an extent that she is not motivated to do these things for herself.

48. It is evident that she does have the capability to look after herself – she has been able to continue going to college and when her mental state was better, she had been able to cook for herself and look after herself, however, it would appear that her mother’s arrest and subsequent incarceration has put her in a position where she has had to fend for herself without much resources or constant emotional support.

49. Additionally, her experience of parental separation has likely led to an impaired development of her emotional wellbeing and ability to self-soothe during times of crises which results in her seeking external ways of controlling or managing her emotions; for example, through the use or improper use of medication or over-reliance on her mother when it is generally expected that a young person in their 20s would be more independent.

50. It is difficult to predict how she would cope with being permanently separated from her mother as Miss Zmuda would likely be able to have some degree of access to her mother should she be returned to Poland and be incarcerated there for several years. However, I note that her earliest experience of separation was that of her father who went to prison when she was 6 months old. It would likely impact her badly, with recurrence of her more concerning symptoms of borderline personality disorder with more self-harming behaviour and psychotic-like experiences. Whatever progress she’s made in terms of her journey to achieving more

independence and emotional stability would likely be impacted negatively with more episodes of ill mental health and more frantic efforts to avoid more abandonment.”

33. Having seen Wiktoria outside Court on the day of the hearing, Dr Chin assessed her as experiencing acute psychotic symptoms - she was convinced a friend was planning to kill her.
34. If, as Ms Herbert submits, the judge’s assessment at ¶51-61 was that the impact of extradition on Wiktoria will be exceptionally severe, then he clearly fell into error in downplaying the significance of the impact in the subsequent balancing exercise. In any event, however, I accept Ms Westcott’s submission that there is an inconsistency between the evidence of Dr Chin as to the impact, which the District Judge accepted in its entirety, and the District Judge’s assessment of the impact in the balancing exercise. The District Judge appears to have drawn comfort from Wiktoria’s evidence that she was determined to finish her studies but it is hard to see how this assertion from a mentally unstable and vulnerable young woman can outweigh the clear opinion of a consultant forensic psychiatrist on the impacts of extradition. The District Judge also considered Dr Chin’s letter to the GP to be a protective safeguard. Yet the letter was drafted because of Dr Chin’s concerns about the deterioration he had observed in Wiktoria’s mental health. Further, the District Judge’s assessment in this regard conflicts with the evidence of Dr Chin that the support of family is particularly necessary for individuals with a diagnosis of personality disorder because the NHS and other support services are not well placed to support a chronic condition of this nature.
35. Dr Chin concluded that Wiktoria has a particular dependence upon her mother. The District Judge accepted that, despite her age, Wiktoria is in the position of a dependent upon her mother concluding that “her condition will inevitably deteriorate as it would for any dependant in such cases”. This is to introduce a vague and generic comparator when the evidence before the District Judge was of serious impacts which are specific and particular to Wiktoria. Wiktoria’s unusual dependence upon her mother, despite her age, invokes the jurisprudence in relation to the importance of the interests of children in the Article 8 balancing exercise. In HH (citation above) Baroness Hale emphasised that whilst the physical and educational needs of a child may be met outside the family, their emotional needs can only be fully met within a functioning family. This statement is particularly apt in the present case given Dr Chin’s distinction between Wiktoria’s ability to care for herself physically as compared with the emotional impacts of extradition. In HH Baroness Hale went on to say that “careful attention will therefore have to be paid to what will happen to the child if her sole or primary carer is extradited” (¶33). The Appellant is, in effect, the primary if not sole carer for Wiktoria given her child like dependence and there is no evidence or suggestion that the grandmother in Poland or Wiktoria’s aunt can fulfil the role. Beyond expressing the hope that Wiktoria might be able to receive help from external agencies, the District Judge did not consider who might provide the necessary support in place of her mother, in circumstances where Dr Chin’s evidence was that family support will be particularly important.
36. For these reasons I have concluded that the District Judge downplayed the exceptional impact of extradition on Wiktoria when conducting the balancing exercise.

37. In coming to this view I have considered the fresh evidence which the judicial authority was permitted to rely on – namely the Polish Government’s response to the CPT report about the extent of contact with the outside world permitted to prisoners on remand. However, the evidence of Dr Chin demonstrates that access to a payphone once a week cannot mitigate the impacts of extradition on the complexities of Wiktorija’s personality disorder.

Seriousness of the offending

38. The Appellant is charged with organising/participating in illegal immigration. Ms Westcott submitted that the District Judge fell into error in mischaracterising the offending as human trafficking when conducting the balancing exercise at ¶125. In response Ms Herbert acknowledged the error but contended it did not detract from the seriousness of the offending.
39. In Botos v Italy [2018] EWHC 2809 (Admin) extradition was sought in relation to a conviction for an offence of facilitation of unauthorised entry and residence to Italy. The District Judge referred to the offending as “people trafficking”. On appeal Supperstone J concluded that “the Appellant was not charged with or convicted of that offence. Whilst the offence of facilitation of unauthorised entry and residence to Italy is a serious offence it does not have the impact on the balancing exercise that the very serious offence of people trafficking had for the District Judge” (¶24). The essence of human trafficking is exploitation, whether by force or other forms of coercion.
40. Ms Herbert pointed to ¶109 of the ruling and submitted that the District Judge did not simply describe the offending as serious because it concerned people trafficking. His reasons for considering the offending as serious were because it involved international offending within an organised crime group and the movement of just under 200 people. However ¶109 sets out the list of factors favouring extradition (as to which there is ambiguity as to whether the District Judge was simply recording the submissions of the parties or not (see above)). At ¶125 when the District Judge conducts the balancing exercise, he refers to the offending as human trafficking. I accept that charges of organising/assisting the unlawful immigration of just under 200 people are undoubtedly serious. As Ms Westcott acknowledged, a substantial custodial sentence is likely upon any conviction. Nonetheless, the District Judge’s error in characterising the offending as more grave than it is assumes a particular focus because the judge treated the seriousness of the offending as tipping the balance in a decision he regarded as finely balanced.

Public interest in extradition eroded by the Appellant’s offer of voluntary co-operation

41. Ms Westcott submitted that the District Judge was wrong not to find the public interest in extradition considerably eroded by the Appellant’s offer of cooperation with the prosecution. She pointed to the refusal, without reasons, of the Polish authorities to the offer. In response, Ms Herbert pointed to ¶126 of the ruling and submitted that the District Judge had taken this factor into account.
42. The District Judge acknowledged the response of the Polish authorities was troubling and eroded the public interest in extradition. In doing so, however, he did not refer to the fact that the Appellant is not a fugitive. During the hearing, the Court was taken to attendance records which indicate that the Appellant was attending Ruskin College in

Oxford for parts of the indictment period. As Ms Westcott acknowledged, the records do not cover the entire indictment period and the assistance the Appellant is alleged to have provided could have been conducted from England. Nonetheless, it is evidence that the Appellant wishes to put before the Polish prosecuting authorities to demonstrate that there has been in her words “an awful mix up”. Any offer to assist the investigation which may be treated with scepticism in the case of a fugitive cannot necessarily be said of an offer of cooperation from someone who is not a fugitive and is of previous good character.

43. The Polish authorities have given no reason for their refusal of the offer. In Komar v Poland [2015] EWHC 2547, the Court found that:

“31. The appellant's legal representatives have been most diligent in raising these various less coercive measures with the Polish judicial authority. Where less coercive measures are reasonably applicable, and a requested person raises them with the judicial authority in the requesting state, it must consider them and give some explanation, however brief, for rejecting them, if the position plainly calls for that: cf. Spanish Judicial Authority v. Arranz [2015] EWHC 2305 (Admin) [57], [59].”

The balancing exercise

44. The District Judge said expressly in his ruling that he found the balancing exercise “difficult and troubling”, describing it as “possibly the most difficult I have had to contend with since sitting within the extradition jurisdiction” (¶125). He considered the case to be “finely balanced”.
45. As the District Judge identified, on the one hand there are serious offences to be investigated, albeit not as serious as the District Judge identified. On conviction, a significant custodial sentence is likely. There is therefore a weighty public interest in bringing those involved to justice and affording mutual respect and confidence to international judicial authorities seeking a requested person to that end (¶125).
46. However, the Appellant has offered to co-operate with the prosecution including by returning to Poland on a voluntary basis. The Polish authorities have refused the offer but have not given reasons for doing so. In the absence of any information from the Polish authorities to the contrary I consider I have to accept the submission by Ms Westcott that the prosecution of the Appellant is apparently able to proceed without the need for extradition. This significantly erodes the public interest in extradition. In response to a query from the Court both Counsel agreed that in the event this Court discharges the warrant it will be open to the prosecuting authority to issue a fresh warrant should it become necessary to do so after exhausting the less coercive measures available.
47. As the District Judge also identified, the Appellant is on the face of it a hard working mother with no previous convictions studying to become a nurse whilst working (¶126).
48. The evidence of Dr Chin demonstrates that the impact of extradition on her daughter Wiktoria will cause an emotional crisis, an acute presentation of psychosis, will require an urgent need for medical treatment and is likely to lead to self harm. These impacts are exceptional. In HH it was said that 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 (H(H) v Italy Deputy Prosecutor of the Italian Republic Genoa (citation above at [8])).

49. Accordingly, I conclude that the District Judge ought to have decided that the factors militating against extradition outweighed the public interest in extradition and to have ordered the Appellant's discharge.
50. I have not found it necessary to consider the statements of the Appellant and her sister in relation to developments in family life since the hearing before the District Judge. As Ms Westcott conceded, in broad terms, they do no more than demonstrate that family life remains the same as it was before the District Judge.
51. In light of the decision I have come to in relation to Article 8 ECHR, it is not necessary for me to consider the renewed application for permission to appeal in relation to proportionality.

Decision

52. For the reasons given above, the appeal succeeds and the warrant is discharged.