



Neutral Citation Number: [2025] EWHC 79 (Admin)

AC-2023-LON-002176

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 January 2025

Before :

MR JUSTICE CONSTABLE

Between :

MAREKS GRANTS

Appellant

- and -

PROSECUTOR GENERAL'S OFFICE, LATVIA

Respondent

Louisa Collins (instructed by Taylor Rose) for the Appellants
Amanda Bostock (instructed by CPS Extradition Unit) for the Respondents

Hearing dates: 16 January 2025

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Tuesday 21ST of January 2025.

Mr Justice Constable:

Introduction

1. The Appellant appeals pursuant to section 26 of the Extradition Act 2003 ('the Act') against the decision of District Judge Turnock to order his extradition to Latvia.
2. The Arrest Warrant issued by the Prosecutor General's Office of Latvia on 16th May 2022 and certified by the National Crime Agency ('NCA') on 6th September 2022 sought the Appellant's return to stand trial in relation to the following offence;

“July - December 2019 – Fraud – Persuaded a Russian woman to sell her home in Russia to live with him in Latvia. She entrusted the proceeds (€31,900) to him for the purpose of buying a property in Latvia but he spent it ‘upon his own discretion’ and told her that the money had been damaged when it was accidentally washed in the washing machine.”

The maximum sentence which could be imposed is one of 10 years' imprisonment.

3. Permission to appeal was initially refused by Thornton J but renewed orally following which Garnham J granted permission '*solely on the basis that it is arguable that the Applicant's fugitive status was wrongly determined*'. If the Judge erred with regard to fugitive status, the Article 8 balancing exercise needs to be conducted afresh, with the excision of fugitive status from the balance sheet as a feature in favour of granting extradition. Ms Collins, on behalf of the Appellant, submitted that this re-evaluation of the Article 8 balancing exercise tips the balance in favour of discharge.

Fugitive Status

The Facts

4. The Judge set out the evidence before her at paragraphs 10 to 18 of her written Judgment. No issue is taken with the Judge's summary of the evidence provided by the Public Prosecutor's Office or her account of the Appellant's evidence, given by way of proof and cross-examination. The following is largely extracted from a summary of these parts of the Judgment.
5. In relation to the alleged conduct for which the Arrest Warrant has been issued, the Appellant stated that he met the alleged victim, Svetlana Lebedeva ('SL'), online in around 2018. The Appellant said that on 11 August 2019 SL gave him the money, which founds the basis of the charge (namely 31,000 euros), which he said he tried to deposit into a bank on 18 August 2019. However, he was unable to do this and he fell asleep on the train and, when he woke up, he realised the money had been taken, along with the jacket which he had been carrying the money in. In cross-examination, the Appellant stated that he came

to the UK the day after the money was taken from him, without reporting the matter to the police. He could not give an explanation for his failure to report the theft, referring to his “shock” at what had happened. In his proof of evidence, the Appellant had stated that he told her that he had accidentally washed the money in the washing machine. The reason he gives for this was “to slightly delay the time so that I could solve the issue with the money.” The Judge recorded that contrary to what was contained in his proof of evidence, in his cross-examination, he stated that this conversation with SL happened over the telephone whilst he was in the UK and she was in Russia.

6. In his proof of evidence, the Appellant claimed that:

“On 8 January 2020, in the morning, I had a fight with Svetlana and I told her to go back to Russia, to which she answered me that she would then go to the police to write a statement and that her friend Mage had advised her to do the same. Because at that time I did not have any savings in order to hire a lawyer, I decided to leave the country.”
7. The Appellant was never arrested and/or questioned by the Judicial Authority regarding the alleged offence.
8. Notwithstanding the reference to 8 January 2020, the Further Information states that criminal proceedings were in fact initiated on 6 January 2020 after SL visited police to report the offence. It records that the complainant testified, on 7 January 2020, that after she had visited the police the Requested Person called her and said that “he was thinking of hiding from the police because he did not want to sit in prison.” It may be therefore that on 8 January 2020, the Appellant was told that SL had reported the matter to the police; or it may be that the 8 January date is wrong and the conversation took place in advance of 6 January 2020. The Judge proceeded on the basis that, at the date of the conversation, SL was threatening to report the matter.
9. It was alleged also by SL that the Appellant wrote to SL that “he did not want to cooperate with the police.” The Further Information states that the complainant’s words were confirmed “*by the attached transcripts of the conversations that she had with Mareks Grants*” although the Court was not supplied with a translated copy of these transcripts.
10. On 14 January 2020 it was determined that the Appellant was located in Germany. A decision to recognise the Appellant as a suspect in relation to this offence was emailed to him on 24 April 2020. This was received by the Appellant, who was required to present himself to the Olaine Police Station in relation to this offence on 24 May 2021. He did not attend. On 18 May 2021, the Appellant informed the police that he had been diagnosed with covid-19 (a document confirming this correspondence was exhibited by the Appellant) and could not therefore attend.
11. The Appellant was then given an opportunity to be interviewed in relation to this offence via video conference. The Appellant refused to testify, but agreed to testify in writing if written questions could be provided to him. The Appellant

was again required to attend the Olaine Police Station on 16 August 2021. He failed to do so, informing the police in advance that he was unable to attend.

12. On 17 January 2022, charges were brought against the Appellant. A summons was sent to the Appellant's email address on 20 January 2022 and he was required to appear at the Prosecution Office in respect of this matter on 28 January 2022. The Appellant did not appear, stating in advance that it was impossible for him to attend due to work and epidemiological conditions. An indictment was also sent to the Appellant's email address in respect of this matter, receipt of which was acknowledged by him. On 28 October 2021, the Appellant participated, by video-link, at a hearing in Latvia at which he complained about the decision to issue an arrest warrant against him.
13. The Further Information suggested that "only Mareks Grants's electronic address is known", although the Judge identified that this was clearly contradicted by the correspondence exhibited by the Appellant in which he informed the police on 18 May 2021 of his UK address.
14. In evidence before the Judge, the Appellant denied, when suggested to him that he had fled Latvia in order to place himself beyond the reach of the authorities, and pointed to the fact that he had engaged with the criminal proceedings from the UK.
15. The Appellant accepted that he had changed his name to Mark Asher Grant, stating that he did this in 2019 or 2020 "because I wanted to move to Israel...and I wanted to adopt a Jewish name." There was no suggestion that Appellant has ever sought to move to Israel however. The Appellant accepted being aware of the ongoing criminal proceedings in Latvia, but stated that he had not been required to attend court and he had not received any correspondence to his UK address. He also accepted that he has not yet provided evidence in writing or appeared to testify over video link in relation to this matter but stated that he sent a detailed explanation about what happened to the police in October 2021, and that this had been ignored.

The Law

16. The starting point is the decision of the House of Lords in Kakis v Cyprus [1978] 1 W.L.R. 779 at 783A, effectively defining 'a fugitive' when stating, '*Delay in the commencement or conduct of extradition proceedings which is brought about by the accused himself by fleeing the country, concealing his whereabouts or evading arrest cannot, in my view, be relied upon as a ground for holding it to be either unjust or oppressive to return him*' (emphasis added).
17. In Ristin v Romania [2022] EWHC 3163 (Admin), Fordham J expressed the principle of fugitivity in the following way (at [23], adopting the District Judge's articulation in that case):

"A person who has knowingly placed himself beyond the reach of a legal process is a fugitive. It is for the requesting state to establish fugitive status to the criminal standard. It must be shown that the requested person

deliberately and knowingly placed himself beyond the reach of the relevant legal process.”

18. This was relied upon by the Judge below at [35] when she considered whether, on the facts before her, she was sure that the Appellant ‘*deliberately and knowingly placed himself beyond the reach of the relevant legal process*’. There is no suggestion that the Judge asked herself the wrong question in law.
19. The primary submission ably advanced by Ms Collins on behalf of the Appellant was that, in circumstances where no legal process had begun, it would as a matter of principle not be possible to satisfy this test. Following the hearing, an opportunity was afforded to Counsel to provide any authorities which dealt with the extent to which an existing legal process must be in train as a prerequisite for considering that a person was a fugitive. Whilst not exactly on point, I am nevertheless grateful to Ms Collins for bringing another decision of Fordham J, in Koc v Turkish Judicial Authority [2021] EWHC 1234 (Admin), to the attention of the Court.
20. The basic facts were that Mr Koc (‘K’) was arrested in September 2002 on suspicion of robbery and kidnap, he was detained for 4 days, he was questioned, he gave a statement to the police and he gave his family address. He appeared at Court when summoned to do so later that year, and gave statements denying participation. He did so without representation. In January 2003, the complainant sought to drop the matter, but the case was not discontinued. There was no control measure or security measure applicable to him which prevent him from doing so. No condition was imposed on him requiring him to remain in contact or to notify any change of address. There was no obligation upon him to appear in Court. Nothing appears to have happened before K left for Germany in April 2004, and in May 2004 he came to the UK. Meanwhile, proceedings continued, with a Court appointed advocate representing K, at a glacial pace through hearings and appeals at the end of which in 2015 his conviction became final, and an arrest warrant was issued in 2018. The District Judge made a series of findings about K’s state of mind when leaving Turkey in 2004. The Judge found that K left in the knowledge that the case was ongoing, and that K was aware that he had been charged with the matters either before or during the course of the hearing in 2002, and that the case was proceeding. The District Judge concluded, ‘*there came a point in time when he merely decided to leave Turkey and hope[d] that the matter would fade away and that he would not be pursued*’.
21. Taking these factual findings by the District Judge at face value, Fordham J allowed the appeal against the finding of fugivity. He said:

“The essence of Mr Allen's argument on the Appellant's fugitivity from April 2004, as I saw it, was as follows. The Appellant “knowingly placed himself beyond the reach of a legal process” (Wisniewski paragraph 59). That was so, notwithstanding that when he left Turkey in April 2004 he did not breach any condition or obligation which have been imposed on him. It was because “an inevitable consequence” when he left was that he would “eventually fall foul” of an obligation or requirement arising from the Turkish criminal process. That, together with the Judge's finding as to his

state of knowledge and state of mind ... made the Appellant a fugitive. That is the essence of the argument. I cannot accept it. The starting point is that the Respondent does not say, cannot maintain, and the Judge did not find, that any obligation was imposed on the Appellant as at April 2004. There was no restriction on the Appellant leaving Turkey; there was no obligation as to his location; there was no obligation as to notification of an address or change of address; there was no obligation to make or maintain contact with any person or authority; there was no obligation to attend a trial hearing The case-law on fugitivity strongly emphasises breach. As Ms Townshend emphasised, Wisniewski – which analysed the position in relation to suspended sentences – speaks as a fugitive of a person “who breaches conditions of his sentence which require him to keep in contact” and who “thereby becomes” a person “whose whereabouts are unknown to the authority which is entitled to know them and puts it beyond the authority's power to deal with him”; that it is “his conduct in breach of the suspended sentence that has given rise to his lack of knowledge that the sentence has been implemented” (paragraph 62). Similarly, Stryjecki (paragraph 32) emphasises the action of having “knowingly breached the terms of [the] suspension”. Mr Allen is right that a person whose act of leaving makes a future breach inevitable may be a fugitive. An example is a person owing a regular duty to attend at a police station, who by leaving will not be able to attend future appointments. Another example is where individuals “deliberately flee the jurisdiction in which [they have] been bailed to appear” (Gomes paragraph 26). In this case, the Respondent cannot sustain, on the material before the Court, still less to the criminal standard (Gomes paragraph 27), that any “inevitable breach” arose from the Appellant leaving in April 2004. It is not enough that the individual may one day owe an obligation and fall foul of it by being away from the requesting state: otherwise, everyone would be a fugitive. Moreover, in De Zorzi the appellant left France having been told by the Judge that she would have to return the following year (paragraph 6), but she was not a fugitive when she left, nor when she declined to return. The suggestion that there was an inevitability in this case involves the (alarming) proposition – which I cannot accept – that prosecution, trial, conviction and a custodial sentence were all themselves inevitable. The finding of fugitivity ... cannot therefore stand.”

22. This is plainly not authority for Ms Collins’ initial proposition that a legal process must have commenced as a pre-requisite to any finding of fugitivity. Such a proposition does not survive the obvious example of a murderer who kills and, before the body is cold let alone discovered, boards a plane to a far-off country to avoid the consequences of his actions. Depending upon how well the body is hidden, there is no necessary inevitability of any legal process, at least specifically against the individual in question. However, such a person would fall squarely within the natural definition of a fugitive; someone who, in the words of Kakis, flees the country and evades arrest for his crime. Ms Collins fairly accepted that her starting point may have been unsustainable. It was.
23. Similarly, Koc is not authority for the proposition that in order for someone to be a fugitive, they must, as a matter of principle, be in breach of an obligation

imposed upon them in the context of criminal proceedings. There is clear authority to the contrary: in Ristin, for example, there was no obligation upon Mr Ristin to remain in Romania at the date he left, and he was not in breach of anything when he did so. He was nevertheless a fugitive. That is not to say, of course, that the case-law on fugitivity strongly emphasises breach, as recognised by Fordham J. The absence of any obligation to remain may be a strong indicator that, on the facts of the case, the particular individual is not a fugitive.

The Appeal

24. The Judge expressly recognised that proceedings had not been commenced at the time when the Appellant left Latvia. She nevertheless found that the Appellant had fled Latvia, knowing his alleged criminality was being reported to the police and that he left in order to avoid being prosecuted for that offence. She justified this conclusion for 6 reasons, which can be summarised as follows: (1) the Appellant came to the UK immediately upon finding out that the matter was being reported to the police by SL and in reaction to; (2) he was in full knowledge that a criminal investigation and prosecution was ‘likely’ to be commenced; (3) he had made a ‘tacit admission’ of this, in accepting that upon finding out about the intended police report, he left the country because ‘*I did not have any savings in order to hire a lawyer*’; (4) there was evidence, said by the authorities to be supported by transcripts, within the Further Information that the complainant had told the police that he had told her that ‘*he was thinking about hiding from police because he did not want to sit in prison*’; (5) the Appellant changed his name whilst in the UK; (6) the interaction between the Appellant and the Latvian authorities was not ‘meaningful’, but rather evidence of an intention, ‘*to frustrate and delay the proceedings in respect of this matter.*’
25. Ms Collins argues that, given that there was only at most a threat to report the Appellant to the police, there was nothing approaching the sort of inevitability of prosecution which would permit the inference that the Appellant was leaving in order to avoid that process. In this regard, I accept that, objectively, there was nothing inevitable about how proceedings would develop. This would weigh against a finding of fugivity, but it is not determinative of the state of mind of the Appellant at the time he left. On any view, the Judge was justified in finding that it was at least likely that he was about to be subjected to a police investigation, arrest and prosecution.
26. In respect of his tacit admission, Ms Collins’ submitted that this may have been referring to the cost of potential civil proceedings. This submission was not supported by evidence. It is also unconvincing; in the context of the subject matter of his witness statement, the Appellant was plainly talking about his reaction to the actual or threatened report to the police about the missing €31,000. Although Ms Collins criticised the fact that this evidence was not ‘probed’ in cross-examination, there is of course no duty on counsel to ask questions about evidence which supports their case. It is perhaps unsurprising that this evidence was left well alone in questioning and then relied upon in submissions. The Judge was justified in seeing this as an admission that the Appellant left, in his own mind, specifically to avoid engaging with the criminal investigation which he saw lying ahead. The Appellant’s own evidence about his motivation for

leaving the country is an important feature which will no doubt distinguish this case from many others.

27. As Ms Collins accepted, the Judge was entitled to place some weight on the evidence provided by the complaint as reported by the authorities and provided within the Further Information, with or without the underlying transcripts, which supported the Appellant's own evidence that he was seeking to evade the police investigation.
28. There was no challenge to the Judge's reasoning that the name change whilst in the UK, *'is highly suspicious and is capable of further supporting the conclusion that his intention was to avoid enforcement action being taken....'*
29. As to the Judge's characterisation of the Appellant's engagement as not meaningful, this was clearly a finding open to the Judge on the evidence. There is no reason at all that if the Appellant's intention was to engage meaningfully, he would not have submitted to an online interview, as opposed to insisting that he would only answer questions in writing, which was not a permissible form of engagement.
30. As submitted by Ms Bostock, whilst each factor might on their own have been insufficient to bear the weight of proving fugitive status, it is the aggregate effect which the Judge was entitled to consider, and particularly the Appellant's own evidence about his motivation for leaving for the UK upon hearing that his alleged criminal behaviour was being reported to the police. It was open to the Judge to find on the evidence that the Appellant himself considered there was sufficient inevitability about criminal proceedings being commenced against him and that his motivation for his move to the UK was specifically to avoid that investigation. As Fordham J put it in Ristin, these circumstances could properly be characterised as falling squarely within the ambit of the classic character of fugitivity: knowing and evasive relocation. This is very different to Koc in which, although K may have known that proceedings against him had not been discontinued, there was no evidential basis for the Judge to conclude that K did not justifiably believe he was free to leave the country, or that his real motivation for his leaving was, in fact, to avoid the criminal proceedings.
31. I cannot therefore, in the circumstances, find that the Judge was wrong in her conclusion that the Appellant left Latvia as a fugitive.

Article 8

32. In these circumstances, it is not necessary to re-evaluate the Article 8 assessment having removed from the equation the Appellant's fugitive status. Nevertheless, I do so for completeness.
33. It is first important to note that the Judge put her mind to the balancing exercise in the hypothetical circumstances in which she was wrong about the fugitive status of the Appellant. At [39(iv)] she stated in terms that she would have reached the conclusion that extradition was not disproportionate even in the absence of a finding of fugitivity.

34. There is, rightly, no criticism made of the directions the Judge gave herself in respect of the proper approach in law to the exercise in weighing the matters raised in favour of as well as against ordering extradition, in an Article 8 context on the basis of Poland v Celinski Others [2015] EWHC 1274; Norris v Government of the United States of America [2010] UKSC 9 and HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25.
35. There can be no doubt that the Judge correctly identified the factors weighing in favour and against granting extradition. Each of the factors identified by Ms Collins are factors which the Judge makes reference to at paragraph [38] when dealing with factors against extradition. The Judge was also undoubtedly correct to underline the seriousness of the alleged offending and the strong and continuing important public interest in the UK abiding by its international extradition obligations. Counter-balancing the existence of some extended family ties, the Judge noted that the Appellant has no current relationship, and whilst he has a daughter in the UK, she was over 17 and not living with the Appellant. She noted that the Appellant had a family life in Latvia that could provide support and noted the absence of documentary support for some of the claims made as to financial support he was said to be providing. Having considered the evidence heard from the Appellant, the Judge concluded that the asserted impact of extradition was '*simply not born out by the evidence available*'. She found that the impact would not go beyond the normal and often unfortunate consequences of extradition. These were findings open to her on the evidence.
36. There is no proper basis to consider that the Judge did not approach the balancing exercise correctly when she concluded after careful consideration that, even absent a finding of fugitivity, she would have reached the conclusion that it was not a disproportionate interference with the Appellant's Article 8 rights to order extradition.
37. Furthermore, it is important to recognise that in the context of an Article 8 evaluation, fugitive status and its impact on the assessment is not binary: even if this was a case which fell on the other side of the line in which the Appellant should not strictly have been tagged with the label 'fugitive', the same underlying facts relating to the conduct of Appellant - and in particular the lack of meaningful engagement with the authorities - would likely weigh against his reliance upon such passage of time as there has been during which he has developed or maintained a life in the UK. In this case, it is unsurprising that the Judge came to the same conclusion even excluding the finding of fugitivity.
38. For these reasons, the Appeal is dismissed.