Neutral Citation Number: [2020] EWHC 3021 (Admin)

Case No: CO/4960/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/11/2020

Before:

THE RT HON LADY JUSTICE CARR DBE
and
THE HON MR JUSTICE PICKEN

- -

Between:

DAVID KECHEDZHIEV	**Claimant**
- and -	
GDANSK REGIONAL COURT, POLAND	**Defendant**

- -
- -

Gemma Rose (instructed by the **National Legal Service**) for the **Claimant**
Tom Hoskins (instructed by the **Crown Prosecution Service**) for the **Defendant**

Hearing date: 4 November 2020

- -

Approved Judgment

Lady Justice Carr DBE:

Introduction

1. This is an appeal pursuant to s. 26 of the Extradition Act 2003 ('the Act') by the Appellant, a Bulgarian national, born on 2 May 1991 and so now 29 years old, against the decision of District Judge Jonathan Radway ('the District Judge') sitting in the Westminster Magistrates' Court dated 12 December 2019.

2. The Appellant is sought by the Regional Court in Gdansk in Poland for the prosecution of six offences said to have been committed by him between August 2014 and October 2016 in Poland. An 'accusation' European Arrest Warrant (the 'EAW') was issued on 9 April 2019 and certified by the National Crime Agency ('NCA') on 8 August 2019. Poland is a Category 1 territory for the purpose of the Act and so Part 1 of the Act applies.

3. The District Judge held that:

   i) All six alleged offences were extradition offences in accordance with s. 10 of the Act;

   ii) Extradition would be compatible with the Appellant's human rights under Article 8 of the European Convention of Human Rights ('Article 8') ('ECHR') and that extradition would not be disproportionate.

   He directed the Appellant's extradition pursuant to s. 21A of the Act 2003.

4. Limited leave to appeal was granted by Steyn J on 18 February 2020 in respect of a challenge to the District Judge's findings that the allegations were extradition offences for the purpose of s.10 of the Act ('Ground 1') but leave was otherwise refused. The Appellant renews his application for leave to challenge the District Judge's findings on Article 8 and proportionality on the basis of new material, namely the Appellant's partner's pregnancy (which post-dates the hearing and decision below) ('Ground 2').

5. On 25 September 2020 the Appellant applied to vary his grounds of appeal to add two further grounds:

   i) That the District Judge was wrong to conclude that the warrant was validly issued by a Judicial Authority meeting the requirements of impartiality and independence required by the Framework Decision ('Ground 3');

   ii) That extradition is not compatible with the Appellant's rights under Article 6 of the ECHR given the political and jurisprudential evolution in Poland since the decision in *Lis v Poland* [2018] EWHC 2848 (Admin) ('Ground 4').

6. The application to vary was (realistically) unopposed. Permission to amend was granted. However, given that the issues raised in Grounds 3 and 4 are due to be considered by the Divisional Court on 15 December 2020 (in *Wozniak v Poland* [2020] EWHC 1459 (Admin) and *Chlabicz v Poland* CO2976/2019), a stay on those two grounds was imposed (pending the outcome of those appeals). Accordingly, only Grounds 1 and 2 fall for present consideration.

The relevant facts in summary

7. The Appellant is accused of six crimes, allegedly committed in Poland in the period August 2014 to October 2016. According to the Gdansk Public Prosecution Service, he was first detained on 27 October 2016 in Poland. He was required to notify the Polish authorities of each change of address, a requirement which he fulfilled until 24 April 2017, and to report weekly to the police, a requirement which he fulfilled until 26 May 2017. He was also prohibited from leaving Poland.

8. The last contact with the Appellant by the Polish authorities was on 29 May 2017, when he was summoned to appear at the prosecution office on 2 June 2017. He failed to attend as required. On 27 September 2017 a search order was made and the decision to press charges was issued.

9. By then the Appellant was in Germany, where he had fled in the week after he last reported to police (on 26 May 2017). He was joined in Germany by his wife, Zlatka Rumenova ('Ms Rumenova'), also a Bulgarian national and whom he had met in Poland in 2014 (before she was committed to prison in 2016 for some two and a half years).

10. In December 2018 the Appellant and his wife entered the United Kingdom from Germany. They went to live in Leicester and found work in a factory. On 9 July 2019 their first child was born.

11. On 22 November 2018 a request for the issue of the EAW was filed and, as set out above, it was issued on 9 April 2019 and certified by the NCA on 8 August 2019.

The EAW

12. The EAW is in respect of the following offences, namely that the Appellant:

> *"I. Between November 2015 and 3 May 2016 in Leborski district, Poland, in order to achieve financial benefit, facilitated prostitution by driving two women to and from a place where they provided sexual services;*
>
> *II. Between September and October 2016 in Leborski district, Poland, in order to achieve financial benefit, facilitated prostitution by driving a woman to and from a place where they provided sexual services and indicated the pricelist of the sexual services;*
>
> *III. Between October 2015 and February 2016 in Leborski district, Poland, in order to achieve financial benefit, facilitated prostitution by driving a woman to and from a place where they provided sexual services;*
>
> *IV. Prior to 1 September 2015 in Leborski district, in order to achieve financial benefit, facilitated prostitution by driving a woman to and from a venue where she provided sexual services and acted on behalf of a third party, Mette Demirov (who forced*

> *women into prostitution), by supervising the prostitution and collecting monies in his absence;*
>
> *V. On 15 September 2016 presented a forged drivers' licence purportedly issued by Bulgarian authorities to the Police station in Zary, Poland;*
>
> *VI. On 5 August 2014 presented a forged drivers' licence purportedly issued by Bulgarian authorities to the police station in Staszów, Poland following a road traffic event."*

13. The maximum sentence for offences I-III and V-VI is 5 years' imprisonment. Offence IV carries a maximum sentence of 10 years' imprisonment.

14. The Appellant was arrested at his work address in Leicester on 26 September 2019. He was brought before Westminster Magistrates' Court for his first appearance on 27 September 2019. There he was represented by the duty solicitor and granted conditional bail by District Judge Brennan, the conditions including a pre-release security of £3000. Directions were made for the service of a proof of evidence, statement of issues and for an application for legal aid to be made.

The judgment below

15. At the full hearing on 21 November 2019 at Westminster Magistrates' Court the Appellant made an application to adjourn the proceedings as he had not been able to secure legal representation. This was refused by the District Judge. The Appellant and his wife then both gave evidence. Judgment was reserved and handed down on 12 December 2019.

16. The District Judge recorded the issues before him as follows:

> a. whether the allegations were extradition offences in accordance with s.10 of the Act); and
>
> b. interference with the Appellant's right to a private life under Article 8.

17. The District Judge made a number of findings on the evidence before him. Significantly for present purposes, he found the Appellant to be a fugitive. He considered the relevant authorities, including *Wisniewski and other v Poland* [2016] EWHC 386 (Admin) and *De Zorzi v France* [2019] EWHC 2062 (Admin), and concluded that the Appellant had known he was instructed not to leave Poland, that he had to report his address to the police and to attend the police station in person each week. He had made a conscious decision not to do so when he left for Germany. There is (rightly) no challenge to this finding.

18. As for s. 10 of the Act, the District Judge decided that the charges would constitute offences in England and Wales. On Charges V and VI, so much was obvious. In relation to Charges I-IV, the relevant equivalent statutory provision in English law was s. 53 of the Sexual Offences Act 2003, namely controlling prostitution for gain. The District Judge recognised that such an offence requires an "intention to control". Because it was uncertain whether the offences in Poland required such mens rea, he proceeded on

the basis that an intention to control had to be impelled from the alleged conduct described in the EAW (or be the only reasonable inference (referring to *Zak v Poland* [2008] EWHC 470 (Admin) ("*Zak"*) at [16]; *Assange v Sweden* [2011] EWHC 2849 (Admin) at [57]; *Cleveland v Government of the USA* [2019] EWHC 619 (Admin) ("*Cleveland"*) at [53] to [64])). He concluded that each of Charges I-IV were also extradition offences for the purposes of s.10 of the Act.

19. In reaching this conclusion, the District Judge commented that, in relation to Charge IV, the first in time, the "inevitable inference" was that the Appellant was intentionally controlling the prostitute. In relation to Charge II, the District Judge described it as being "almost impossible to conceive how indicating a price list for sexual services could be inadvertent or have an innocent explanation; controlling her by driving her and indicating prices, if true, can only have been with the intent necessary for the offence in question".

20. As for Charges I and III, he said this:

> *"Charges I and III both refer to 'facilitating' prostitution, but the conduct is limited to driving Aleksandra, Marlena and Agnieszka to and from the place where they provided the sexual service. If these were the only charges, I would hesitate to conclude to the necessary standard they were extradition offences because it would not be inevitable the necessary intent was present. However, it is impossible not to see these two charges in the context of the conduct in charge IV, which pre-dates them by a month or two. Taken as a whole, what the EAW is complaining of is the Requested Person playing a supervisory role in the deployment of the prostitutes and the only reasonable inference to be drawn, if he was driving these three women named in charges I and III to and from their pre-arranged assignations, is he was acting with intent. Again, the conclusion that he would benefit from this activity is compelled."*

21. Having concluded that no bars to extradition under s. 11 of the Act arose, the District Judge went on to consider s. 21A of the Act and whether the extradition of the Appellant was compatible with his human rights and proportionate.

22. The District Judge identified the central authorities (namely *Norris v Government of the USA* (No.2) [2010] UKSC 9; *HH and others v Deputy Prosecutor of Genoa Italy and others* [2012] UKSC 25 ("*HH*"); *Celinski and others v Polish Judicial Authorities* [2015] EWHC 1274 (Admin) ("*Celinski*")) and then conducted a thorough and careful balancing exercise by reference to the factors for and against extradition.

23. He noted at the outset that the Appellant had a partner and 4 month old child here. He observed that the interests of children were a primary consideration, though not always the prime and not necessarily the paramount consideration. He recognised that extradition would have a significant adverse effect on the Appellant's wife and child, something that was a factor of considerable weight. On the other hand, whilst the Appellant had lived in the UK since December 2018 and had been gainfully employed for most of that time, the Appellant did not have a "well settled life" in this jurisdiction. Rather, he and his wife had lived "fairly transient lives" since leaving Bulgaria. Further,

the District Judge reasoned, the fact that he was a fugitive significantly reduced the weight to be attached to any private or family life acquired here (see *Celinski* (supra) at [48(iii)]). The prostitution offences were serious and not old, affording them greater weight in the balancing process.

24. The District Judge identified the high public interest in extradition, which would usually outweigh Article 8 rights unless the consequences are exceptionally severe. The hardship of extradition here would, in the District Judge's assessment, be no more than the usual consequences of incarcerating a father who is the main breadwinner within a family. His wife would be eligible for welfare support.

25. He summarised the factors in favour of extradition as follows:

    i) The constant, weighty public interest that the UK fulfil its obligations under the EAW scheme;

    ii) Mutual confidence and respect for the decisions of the judicial authority;

    iii) The Appellant is a fugitive from justice;

    iv) The UK should not become or be seen as a safe haven for fugitives from justice;

    v) The offences are so serious that they would in all probability attract a custodial sentence of many months, maybe years, if following trial he were to be convicted.

26. The District Judge summarised the factors against extradition as follows:

    i) The Appellant had recently begun establishing a settled private and family life in the UK and had worked for almost all the time since arrival, as had his wife before maternity leave. However, the reality was that he and his family's Article 8 rights are "not yet at all well-established here";

    ii) He had led a law-abiding, blameless life since coming to this country;

    iii) Extradition and consequent separation would cause emotional harm to him, his wife and their child. Removing any parent usually has an adverse impact, although this child would remain cared for by his mother;

    iv) His wife, young and unaccustomed to the UK with little English, no family here and few friends, would undoubtedly find it difficult to cope with looking after the child on her own and she faces very difficult decisions about what to do and whether to remain here if the Appellant were extradited.

27. The District Judge ultimately concluded that there were no compelling features which overrode the persistent and strong public interest in extradition.

Events since the judgment below

28. The Appellant relies on a "proof of evidence" from him (undated and unsigned) and a witness statement from his wife (also undated and unsigned). It appears that Ms Rumenova is pregnant, with the baby due on 21 December 2020. The Appellant and his

wife say that they discovered the pregnancy in May of this year, and that it was unplanned. Both outline the difficulties and their fears and anxieties if the Appellant were to be extradited to Poland. The Appellant explains how his children do not have a future in Bulgaria. He wants them "to be here, to study hard and to have better lives than we had".

29. Ms Rumenova refers to numbness in her arms and legs during her last pregnancy, for which she received injections. She says that her legs are painful at night and in the mornings, and that she has been advised that she may need to have injections in her legs after she gives birth for 30-40 days. Her pregnancy is not currently impacting her ability to work.

30. She also states that she suffers from anxiety, which she says dates back three years to when she was in prison in Poland (from 2016 to October 2018). There is some limited medical record which shows that she has been taking an anti-depressant in the form of citalopram since at least 5 February 2020. It should nonetheless be noted that, although asked about her health by the District Judge at the hearing, she does not appear to have mentioned any problems with anxiety in her evidence before him.

The parties' positions on appeal

31. For the Appellant, Ms Rose submits in summary as follows.

32. On Ground 1, Charges I and III specified in the EAW cannot be said to amount to an offence under s. 53 of the SOA, and are therefore not extradition offences. The District Judge was wrong to "read across" the necessary intent from Charges II and IV. Each offence needed to be considered separately. Charges I and III do not, in themselves, satisfy the dual criminality requirement; the description of the charges amounts simply to facilitating prostitution by driving. This is not enough to amount to the offence in English law – "facilitating" by driving does not impel the inference of control. A proper interpretation of the Extradition Act 2003 (Multiple Offences Order) 20003 SI 2003/3150 ("the Multiple Offences Order") is that the charges should be considered separately. As such, the District Judge was wrong to proceed on the basis that the other charges could assist. The charges should be considered separately also because they relate to different dates and periods of time, and different women are involved.

33. On Ground 2, Ms Rose submits that, in the light of Ms Rumenova's pregnancy this year, extradition would constitute a disproportionate interference with the Appellant's rights under Article 8 ECHR which requires discharge under s.21(2) of the Extradition Act 2003. This development shifts the balance such that extradition should be refused. The new pregnancy, combined with its medical complications, means that Ms Rumenova would struggle far more as a single parent than was the case before, for the simple reason that she will have to look after two children rather than a single child. Ms Rumenova's anxiety would make being a single parent in the UK, where she does not speak the language and has no family support, much harder than it would ordinarily be. It would be hard, if not impossible, for Ms Rumenova to return to Poland, given her traumatic experience in prison there. Return to Bulgaria would be difficult (even impossible, it was submitted), as her mother has terminal cancer and her father is an alcoholic. Ms Rumenova is concerned that, caring for two children and with her anxiety, she would no longer be able to work, and would suffer financial hardship as a result. Ms Rose emphasises that this is a case in which children are involved and that,

as such, the court must consider their best interests, including the impact of the loss of their father.

34. For the Respondent, Mr Hoskins resists the appeal. On Ground 1, the District Judge was correct to decide that Charges I and III satisfied the dual criminality requirement. The District Judge adopted a proper approach in considering the other offences alleged (see *Cleveland* at [21]). The District Judge did not have to "close his mind to the obvious". The chronology of the offences, where Charge IV is the most serious, demonstrates that these offences are akin to a continuous course of conduct. The act of driving the prostitutes amounted to sufficient control; the Appellant clearly had the intention to do what he was doing - it was intentional. Mr Hoskins also submits that the evidence given by the Appellant before the District Judge can be relied on, referring to the decision in *Mlynarik v District Court in Pribram* [2017] EWHC 3212 (Admin) ("*Mylnarik*") at para [27]-[28]. Here the Appellant admitted in oral evidence that he knew that he was driving the women in question for prostitution and that someone (albeit not him) would get a financial gain.

35. On Ground 2, on the assumption that the court would entertain the new material relating to Ms Rumenova, that new information does not mean that extradition would be a disproportionate interference with the Appellant's Article 8 rights. The District Judge was correct to conclude that the consequences of extradition would not be "exceptionally severe". The fact that the Appellant is a fugitive is significant: the Appellant had knowingly placed himself beyond the reach of the authorities; his family life here was "built on uncertain ground".

The relevant law

<u>The dual criminality requirement</u>

36. In order for the court to be able to order extradition under a Part 1 warrant, it is necessary for the offending detailed in the warrant to satisfy the dual criminality requirement under s. 10 and s. 64 of the Act.

37. S. 10 of the Act provides materially as follows:

> *"(1) This section applies if a person in respect of whom a Part 1 warrant is issued appears or is brought before the appropriate judge for the extradition hearing.*
>
> *(2) The judge must decide whether the offence specified in the Part 1 warrant is an extradition offence.*
>
> *(3) If the judge decides the question in subsection (2) in the negative he must order the person's discharge.*
>
> *(4) If the judge decides that question in the affirmative he must proceed under section 11."*

38. S. 64 sets out the requirements for an 'extradition offence' in respect of a Part 1 warrant. S. 64(3) states:

> *"The conditions in this subsection are that—*

> *(a) the conduct occurs in the category 1 territory;*
>
> *(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;*
>
> *(c) the conduct is punishable under the law of the category 1 territory with imprisonment or another form of detention for a term of 12 months or a greater punishment."*

39. Various authorities have addressed the question of what inferences can properly be drawn when comparing foreign offences to ensure that the dual criminality requirement under s.64(3)(b) is met and the law is now essentially non-controversial.

40. In *Zak* it was said (at [16]) that the requesting authority did not have to identify or specify in terms the relevant mens rea of the English offence. It was sufficient if it could be inferred by the court from the conduct that was spelled out in the warrant and further information. In *Assange v Sweden* [2011] EWHC 2849 (Admin); (2011) 108(44) L.S.G. 17; [2011] 11 WLUK 63 (at [57]) the Divisional Court held that it could only infer the necessary mens rea for the equivalent English offence if it was "the only reasonable inference" to be drawn from the facts alleged. In *Cleveland* the Divisional Court stated (at [59]) that the mens rea:

> *"….. may be inferred provided that it is an inevitable corollary of, or necessarily implied from, the conduct which will have to be established in that foreign jurisdiction. Plainly, where an essential ingredient under English law is absent from the alleged foreign offence, dual criminality can only be satisfied by insisting on that test, rather than by being satisfied that the inference is one which could or might be drawn; otherwise a person could be convicted in a foreign court for something which would not be a criminal offence in this jurisdiction.'*

41. The effect of these authorities is that the necessary mens rea for the purpose of meeting the dual criminality requirement can be inferred from the conduct alleged, provided that it is the only reasonable inference to be drawn or is necessarily to be implied from that conduct.

The Multiple Offences Order

42. The Act was amended by the Multiple Offences Order which allows for the partial execution of a Part 1 warrant where multiple offences are alleged, such that extradition can be refused in relation to some offences but not all. S. 2 provides:

> *"2.—(1) Section 10 is modified as follows.*
>
> *(2) In subsection (2) for "the offence" substitute "any of the offences".*
>
> *(3) For subsection (3) substitute—*

> *"(3) If the judge decides the question in subsection (2) in the negative in relation to an offence, he must order the person's discharge in relation to that offence only.".*
>
> *(4) For subsection (4) substitute—*
>
> *"(4) If the judge decides that question in the affirmative in relation to one or more offences he must proceed under section 11".*

43. In *Cleveland* the Divisional Court stated (at [21]):

> *"Where, as in the present case, the request alleges multiple offences, each one needs to be considered separately, but need not be assigned to a reciprocal offence under English law. Where the alleged conduct relevant to a number of offences is closely interconnected, it does not matter whether that conduct would be charged in this jurisdiction in the same manner as in the requesting state (Tappin v Government of the United States of America [2012] EWHC 22 (Admin) at para. 44)."*

The English law offence: controlling prostitution

44. S. 53 of the Sexual Offences Act 2003 (the 'SOA') provides:

> *"A person commits an offence if—*
>
> *(a)he intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world, and*
>
> *(b)he does so for or in the expectation of gain for himself or a third person."*

45. It is therefore a requirement of the offence that there is an intention to control. In *R v Massey* [2007] EWCA Crim 2664 the Court of Appeal stated (at [20]):

> *"In our judgment, "control" includes but is not limited to one who forces another to carry out the relevant activity. "control" may be exercised in a variety of ways. It is not necessary or appropriate for use to seek to lay down a comprehensive definition of an ordinary English word. It is certainly enough if a defendant instructs or directs the other person to carry out the relevant activity or do it in a particular way. They may be a variety of reasons why the other person does as instructed….."*

46. "Control" therefore retains its ordinary meaning; it does not require any element of coercion or force.

Article 8

47. The right to private and family life is protected under Article 8:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

48. S. 21A of the Act provides:

"i. 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")—

whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;

whether the extradition would be disproportionate.

ii. 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.

iii. These are the specified matters relating to proportionality—

the seriousness of the conduct alleged to constitute the extradition offence;

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

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

iv. The judge must order D's discharge if the judge makes one or both of these decisions—

that the extradition would not be compatible with the Convention rights;

that the extradition would be disproportionate.

v. The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—

> *that the extradition would be compatible with the Convention rights;*
>
> *that the extradition would not be disproportionate."*

49. In *Norris v Government of United States of America* [2010] UKSC 9 Lord Phillips stated (at [56]) that:

> *"…the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition.."*

50. The court must carry out a careful balancing act (see *HH* and *Celinski*). It can have regard to numerous factors including:

i) any delay in the case and who caused it,

ii) the relative seriousness of the offence,

iii) the type of offending, particularly if it is not violent or sexual offending,

iv) the Applicant's own Article 8 rights,

v) the Article 8 rights of the Applicant's family,

vi) the health of a child or spouse left behind, and

vii) the period the Applicant has served on remand in this country.

51. In *HH* the Supreme Court confirmed ([33]) in the context of the family rights of children that:

> *"their best interests are a primary consideration, although not always the only primary consideration and not necessarily the paramount consideration."*

52. In order for appellate interference with a decision on proportionality to be appropriate, it must be demonstrated that the District Judge was wrong to come to the decision that he did (see *Celinski* at [24]).

Analysis

Ground 1: dual criminality

53. It is common ground that the EAW does not address the question of intention to control in terms in Charges I and III. The question therefore is whether the existence of such an intention is impelled or the only reasonable inference to be drawn from the facts alleged.

54. It is by no means clear that the requisite mens rea is not contained within Charges I and III themselves and without more. Whilst there is no specific reference to an intention to control, the actus reus is facilitating prostitution by driving – and so inevitably

controlling – the women to and from the designated place for their activities. There can be no question but that the Appellant was driving deliberately – or intentionally.

55. Putting this to one side, I focus on the central issue between the parties on Ground 1, namely whether the District Judge was entitled to read across into Charges I and III the necessary intention by reference to Charges II and IV.

56. In my judgment, the District Judge was so entitled. As was stated in *Cleveland* at [21], each element of the warrant need "not be assigned a reciprocal offence"; "it does not matter whether that conduct would be charged in this jurisdiction in the same manner as in the requesting state". It was permissible to read Charges I and III in the context of the whole offending alleged as a whole in order to understand what acts are being charged and whether therefore the dual criminality requirement is satisfied.

57. When Charges I and III are read in the context of the EAW as a whole, the necessary intention is the only reasonable inference to be drawn: the charges, starting with Charge IV, represent a continuum or pattern of offences involving the Appellant intentionally playing a controlling role in the deployment of prostitutes. Indeed, as a matter of English law, Charges I to IV could have formed part of a single count on an indictment.

58. This does not offend the requirement in the Multiple Offences Order to consider each offence separately. It simply means that each offence, when considered separately, must be read in context.

59. I would therefore dismiss Ground 1 without having to consider the further point relied on by the Respondent (by reference to *Mylnarik*), namely that the District Judge could also have taken into account the Appellant's admission in his oral evidence that he knew that he was driving the women for prostitution and financial gain. Ms Rose in fact conceded that the District Judge would have been entitled to do so, but the correct approach as a matter of principle was not fully debated.

Ground 2: Article 8 and proportionality

60. There would have been no question of us interfering with the District Judge's decision on Article 8 and proportionality below on the basis of the material before him then. Indeed, if anything, I consider that he was quite possibly generous to the Appellant in his approach to the alleged driving licence offences (which he described as "not particularly serious"). These are serious offences of dishonesty, one of which is said to have been committed at a time when the Appellant is also said to have been facilitating prostitution for multiple women. In any event, the District Judge carefully balanced the relevant factors on the material before him and came to a well-reasoned conclusion. Leave to appeal was therefore rightly refused.

61. However, in the light of Ms Rumenova's pregnancy, Article 8 and proportionality fall to be considered again. We grant leave to appeal.

62. The question is whether the news of that pregnancy tips the balance the other way - in favour of discharge - on the basis that extradition would be disproportionate. In my judgment, it does not.

63. The relevant balancing exercise carried out below was broadly as follows:

i) Against extradition:

(a) The Appellant's settled private and family life and work record in the UK. However, as the District Judge commented, he and his family's Article 8 rights are not at all well-established. It appears even now that neither he nor his wife can speak English to any real extent, as they still require the assistance of an interpreter;

(b) The Appellant has led a law-abiding life since arriving in the UK;

(c) The emotional harm that extradition would cause him, his young wife and child, alongside financial hardship;

(d) The child's interests and those of the as yet unborn child;

ii) In favour of extradition:

(a) The gravity of the alleged (relatively recent) offending;

(b) The Appellant's fugitive status. This has a bearing on his private and family life, negatively impacting the weight of the Article 8 rights. We consider that the Appellant's status increases the public interest in extradition: the UK must not be a 'safe-haven' to which the Appellant or anyone else can flee (see *HH* at [8(4)]);

(c) The constant weighty public interest in the UK fulfilling its obligations under the EAW scheme;

(d) Mutual confidence and respect for the decisions of the judicial authority.

64. These remain the relevant factors for consideration. What has changed is that the emotional and financial hardship facing the Appellant, his wife and family if extradition is allowed is now undoubtedly greater. The consequences are not different in nature, but different in degree. Extradition now would certainly be harder for the Appellant and his wife than was envisaged at the time of the judgment below. Whilst it is likely that the Appellant will still be in this country for the birth of his second child, his wife would, if extradition were to proceed in the early part of next year, be the carer of two very young children without apparent familial support, at least in this country. Extradition will also obviously have a detrimental emotional impact on the life of his as yet unborn son.

65. However:

i) The inevitable hardship and emotional harm that would arise in this case is no more than that concomitant with the usual consequences of incarcerating a father who is the family's main breadwinner (see the reasoning in *HH* at [8(1)];

ii) As the District Judge commented, the Appellant's family would be eligible for financial state assistance if their circumstances demanded it;

iii) Further, Ms Rumenova does have options to move. She says that she cannot follow the Appellant to Poland, although the material in support of that assertion

is thin. She can certainly return to Bulgaria, where she lived and spent her entire childhood up to the age of about 16 years. It is said that her mother is terminally ill and her father an alcoholic, but nothing has been volunteered about her wider family and friends in Bulgaria.

66. I am not persuaded that Ms Rumenova has any significant health problems such as to play a material part in the balancing exercise. As already indicated, she made no mention of any problems with anxiety to the District Judge, and it does not appear that she has had any difficulties working. The (relatively minor) physical problems mentioned appear to be pregnancy-related and temporary.

67. I have therefore been unable to conclude that the consequences of interference with the Appellant's Article 8 rights and the interests of his children would be exceptionally serious such as to outweigh the importance of extradition or that there are sufficiently strong counter-balancing factors for extradition to be avoided in circumstances where the Appellant is a fugitive. As the District Judge put it, there is a persistent and strong public interest in extradition for the purposes of justice.

68. Thus, the new material relied upon by the Appellant does not tip the scales in favour of discharge and against extradition. The public interest in extradition in this case, combined with the seriousness of the offences and the Appellant's fugitive status, outweigh the consequences of the inevitable interference with the Appellant's Article 8 rights and that of his family.

69. For these reasons, I would also dismiss Ground 2.

Conclusion

70. Accordingly, I would dismiss the appeal in so far as it is based on Grounds 1 and 2. That is of course not dispositive of the appeal as a whole, since Grounds 3 and 4 remain to be determined.

Picken J:

71. I agree.