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

Case No: CO/1085/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 August 2023

Before :

LORD JUSTICE WILLIAM DAVIS
-and-
MRS JUSTICE MCGOWAN

- -

Between :

EFRAIM FISHEL GRINFELD	**Appellant**
- and -	
GOVERNMENT OF ISRAEL	**Respondent**

- -
- -

Mark Summers KC and Benjamin Seifert (instructed by **Sonn Macmillan Walker**) for the **Appellant**
Joel Smith and Nicholas Hearn (instructed by **CPS**) for the **Respondent**

Hearing dates: 20 June 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3 August by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE WILLIAM DAVIS AND MRS JUSTICE MCGOWAN:

Introduction

1. On 27 January 2022 District Judge (Magistrates' Courts) Zani ("the judge") sitting in the Westminster Magistrates' Court sent the case of Efraim Grinfeld to the Secretary of State for the Home Department for a decision on whether his extradition to Israel should be ordered. Mr Grinfeld now appeals against the decision of the judge.

2. There are three grounds of appeal:

   (a) The extradition request made by the State of Israel was inadequately particularised and, in one respect, the particulars given were misleading. Thus, the request failed to establish any extradition offence.

   (b) Due to prison conditions in Israel, extradition of the appellant to Israel would violate his rights under Article 3 of the European Convention on Human Rights.

   (c) The appellant's family position was such that extradition would lead to a gross and disproportionate interference with the rights of the appellant's family under Article 8 of the Convention.

   The appellant acknowledges that the judge considered each of these issues and found against the appellant. He argues that, in each case, the judge was wrong.

3. The allegation against the appellant was that between June and August 2008 he was involved in violent protests outside an electronics shop in an area of Jerusalem recognised as being ultra-orthodox. In May 2010 an indictment was laid against the appellant charging him with criminal offences arising from those protests. In the later part of 2011 he stood trial in the Jerusalem District Court. Evidence was called by the prosecution and the defence. At the conclusion of the evidence there was an adjournment pending the handing down of the verdict. The date for this handing down was fixed for 15 December 2011. On 5 December 2011 the appellant left Israel. He has never returned. On 17 January 2012 the court in Jerusalem issued a warrant for the arrest of the appellant. His presence was required in order for the court to deliver its verdict and, in the event of a conviction, for the appellant to be sentenced. The warrant was renewed periodically so that, in the event of his return to Israel, the appellant could be arrested.

4. The appellant had gone with his family to Canada. At that point the family consisted of the appellant, his wife and three children. They remained in Canada until around 2016. The appellant and his wife had two more children whilst they were in Canada. In 2016 the appellant's wife and the children went to Israel for two months. Whilst they were there, the wife and the three eldest children renewed their Israeli passports. The appellant did not accompany them. In the same year the appellant and his family moved to the UK. They have lived in London since then. The appellant and his wife have had three more children. The youngest was born in February 2023. The seven older children are now aged between 4 and 16. The eldest child is a girl. All of the other children are boys.

5. The extradition request was dated 15 March 2021. It stated that the Israeli authorities had recently been informed that the appellant was living in the UK. The judge had no evidence as to what steps the Israeli authorities had taken to identify where the appellant had gone after he failed to attend the hearing in December 2011.

Inadequate particularisation and/or no extradition offence

6. Against that background the judge had to consider first whether the extradition request satisfied the requirements of section 78(2) and (4) of the Extradition Act 2003:

> *(2) The judge must decide whether the documents sent to him by the Secretary of State consist of (or include)—*
> *(a) the documents referred to in section 70(9);*
> *(b) particulars of the person whose extradition is requested;*
> *(c) particulars of the offence specified in the request;*
> *(d) in the case of a person accused of an offence, a warrant for his arrest issued in the category 2 territory;*
> *(e) in the case of a person alleged to be unlawfully at large after conviction of an offence, a certificate issued in the category 2 territory of the conviction and (if he has been sentenced) of the sentence.*
>
> *(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 decide whether—*
> *(a) the person appearing or brought before him is the person whose extradition is requested;*
> *(b) the offence specified in the request is an extradition offence;*
> *(c) copies of the documents sent to the judge by the Secretary of State have been served on the person.*

The points at issue in this case were whether the extradition request contained particulars of the offence specified in the request and, if it did, whether the offence specified was an extradition offence.

7. The extradition request stated that the appellant's extradition was requested for six offences: Rioting, Grievous Harm Under Aggravating Circumstances, Common Assault, Assault Under Aggravating Circumstances that Causes Actual Bodily Harm, Blackmail by Use of Force and Blackmail by Use of Threats. The request set out the factual background as follows:

> "4. From June through August 2008, Grinfeld along with 15-20 others rioted dozens of times outside an electronics store in the ultraorthodox neighbourhood of Geula located in central Jerusalem protesting the store's commercial activity which included the sale of DVD and MP players.
>
> 5. During these riots Grinfeld and the others would obstruct the entrance to the store, shove customers and threaten them in an attempt to prevent them from shopping, curse and shove the employees and storeowners, vandalize store property and merchandise and throw dirty diapers in the store's entrance.

> 6. On several occasions Grinfeld cut off the electricity in the store so that he could vandalize under the cover of darkness. Grinfeld shoved, punched and kicked employees who tried to prevent his actions. On several occasions he shoved the employees Uriel Katervosky and Aharon Goldberg. On other occasions he punched and kicked the employee Michael Miadviad. On yet another occasion punched the employee Yehoshua Chatuna.
>
> 7. On one occasion in early August 2008 during the course of one of the abovementioned riots Grinfeld together with others threw a rock hitting the employee Yehoshua Chatuna in the back. Grinfield and the others then fled the scene.
>
> 8. On yet another occasion on August 17 2008 during the course of one of the aforementioned riots Grinfeld together with another dragged the store owner Binyamin Freidman outside the store, kicked him in the hand and struck him in the face until his nose bled causing a broken nose and broken finger that required surgical repair."

The request stated that the evidence called at the trial included witness testimony, photographs, videos and medical evidence. The witnesses included the store owner and two of his employees. The appellant gave evidence to the effect that, whilst he had been present on occasions at the store, he had taken no part in any violence. Rather, he had been the victim of violence. He had sat and read from the book of psalms.

8. The request attached the trial indictment. This contained two charges. The first charge specified four offences: riot; blackmail by threats; common assault (a large number of offences); assault causing actual bodily harm. The charge set out the facts relied on over eight paragraphs. The facts mirrored those contained in paragraphs 4 to 7 of the request i.e. the incidents between June and August 2008 but provided greater detail. At paragraph 7 of the indictment in respect of the first charge, the incident involving the throwing of a rock was described in these terms. During one of the incidents outside the store the appellant was holding a rock as were others with whom he was standing. One of the others was named Veispich. He threw a rock at Yehoshua Zituna (rather than Chatuna) hitting him in the back.

9. The second charge on the indictment specified three offences: riot; harm and wounding under aggravating circumstances; blackmail with use of force. The facts as set out in the charge identified that the charge related to the events of 17 August 2008. They rehearsed in greater detail what was said at paragraph 8 of the request.

10. Although there were only two charges, the offences in respect of which extradition was requested were those specified in respect of each charge. Had this been an indictment within this jurisdiction it would have contained seven counts. The judge sent the case to the Secretary of State on the basis that she would consider extradition in relation to each of the offences.

11. Before the judge it was argued first that the request failed to explain the number of offences for which extradition was sought. The request stated that the appellant's extradition was sought for six charges yet the indictment indicated that seven offences were charged. In addition, the indictment stated that there were "a large number of

offences" of common assault. By definition this failed to explain the number of offences.

12. Second it was submitted that, even if the request contained sufficient particulars of the number of offences, the details contained in the request were too vague to meet the requirements of section 78(2). They amounted to a "broad omnibus" description. This was a reference to what was said in *Von der Pahlen v Austria* [2006] EWHC 1672 (Admin) at [21]:

> *[The] particulars must include four elements: (1) the conduct alleged to constitute the offence; (2) the time, and (3) the place at which he is alleged to have committed the offence; and (4) any provision of law under which the conduct is alleged to constitute an offence ... The use of the introductory word 'particulars' indicates that a broad omnibus description of the alleged criminal conduct, 'obtaining property by deception', to take an English example, will not suffice.*

13. Third, it was said that the judge could not conduct the exercise required by *Biri v Hungary* [2018] EWHC 50 (Admin). That required him in relation to each individual piece of conduct to consider whether it was sufficiently particularised and whether it amounted to an extradition offence.

14. Fourth, the request on analysis lacked basic details of the conduct alleged. It spanned a long time period. Moreover, there was an internal inconsistency within the request. Paragraph 7 of the request said that the appellant had thrown a rock. The indictment said that a man called Veispich had done that.

15. The consequence of these various failings was that the requesting state could not show to the requisite standard that the request was in relation to extradition offences.

16. The judge rejected those arguments. He said that the request taken together with the indictment enabled the appellant sufficiently to understand the nature of the offences for which extradition was sought. He considered that it was relevant that the appellant had been present throughout the trial which had almost concluded with only the verdict to be announced. He did not accept that the time frame was too broad. He found that there was no internal inconsistency in relation to the allegation of rock throwing. It was clear that the allegation was the appellant was present and was holding a rock but that another person had thrown a rock. The judge concluded that the conduct alleged in the indictment would amount to the offence under UK law of putting people in fear of violence contrary to section 4 of the Protection from Harassment Act 1997.

17. The appellant, who repeats his submissions made in the court below, argues that the judge's approach was in error in multiple respects. First, the judge was wrong to find that the equivalent offence under UK law which covered the entirety of the conduct alleged was putting people in fear of violence. Core elements of that offence were not contained in the request. The offence specifies the conduct as causing another to fear on at least two occasions that violence will be used against them. Here the conduct alleged was actual violence. Moreover, the offence must be committed against an identifiable victim on at least two occasions. The request did not identify such a victim.

18. Second, the judge did not engage in the exercise required of him by *Biri* despite that decision having been drawn to his attention. It may be that the exercise would have

been repetitive given the nature of the allegations. That did not obviate the need for the exercise to be undertaken. The requesting authority, for the purposes of the appeal, had served a schedule of charges, something which ought to have been done at the extradition hearing. In relation to the first count on the indictment the schedule indicated that one equivalent offence under UK law was putting people in fear of violence which was not disclosed by the request. The other equivalent offence identified was conspiracy to riot. It was not appropriate to use that as an offence to justify dual criminality since the requesting authority had not alleged a conspiracy. Reliance was placed on *Pawlowski v Germany* [2013] EWHC 2249 (Admin) at [9].

19. Third, the rock throwing allegation in the request was specific. It alleged that the appellant had thrown a rock. The indictment said something different. Thus, the request was misleading in an important respect. The judge's approach was wrong. He should have found that the misleading nature of the request tainted the whole request in relation to the first charge. It left the appellant open to being prosecuted and convicted for something which on the face of the requesting authority's own documents he had not done.

20. The appellant's submissions are directed principally to the first charge on the indictment relating to the period between June and August 2008. It was acknowledged on his behalf that the position was different in relation to the particular events on 17 August 2008.

21. We are satisfied that the conclusion reached by the judge on the issues raised pursuant to section 78(2) of the Act was correct even if we depart from him on the correct route to such a conclusion.

22. We do not agree that the matters set out in the request and amplified in the indictment left the appellant in any doubt as to what was alleged against him. The "broad omnibus" criticism would have force only if the request had stated baldly that the appellant had rioted outside the store or that he had assaulted people without further particularisation. In fact, the request made it clear that a course of conduct was alleged between June and August 2008 with the nature of the conduct being more than sufficiently identified. The approach in *Biri* has limited application when the offences alleged amount to a course of conduct which can be represented by an equivalent offence under UK law.

23. We consider that the judge was entitled to conclude that an equivalent offence under UK law was putting people in fear of violence. The persons put in fear were the owner of the shop and his staff. The owner and two of the members of staff were identified. In each case they were put in fear on at least two occasions. The fact that actual violence was used in some instances would not prevent the appellant from being convicted under UK law of the offence contrary to the 1997 Act.

24. The judge was not directed to the proposition that the request in relation to the first charge also would have been capable of being prosecuted in the UK as conspiracy to riot. Had he been, he would have been entitled to conclude that the proposition was correct. The request made clear that the demonstrations outside the store involved at least 12 people and that they were the result of a criminal agreement to use or threaten unlawful violence. *Pawlowski* was a decision on its own facts, the court making it clear that it was "a warrant-specific decision". The offending in that case consisted of individual burglaries. We consider that the facts of this case are different. This was a

course of conduct which would fully justify the conclusion that conspiracy to riot would be an appropriate charge.

25. We do not consider that the request was misleading in relation to the incident where a rock was thrown. It stated that the appellant together with others threw a rock. It did not say that the appellant had thrown the rock. Rather, the group had been responsible for the throwing of the rock. That is a concept easily understandable under UK law. Where a group of men have gathered with aggressive intent and each has taken up a rock, it is a reasonable inference that the whole group is party to the throwing of a rock by one of their number. The factual description set out in the indictment clarified which person in the group had thrown the rock. There was no inconsistency.

26. In relation to the second charge on the indictment, the appellant's concession is properly made. The event with which that charge is concerned was clearly identified. It occurred in the context of a riot. It involved the infliction of really serious harm. The information supported the proposition that it is alleged that the harm was inflicted with intent to cause serious harm.

27. We are satisfied that the judge was correct in his conclusion that the offences were sufficiently particularised in relation to both charges on the indictment and the offences identified.

28. The judge did not give detailed consideration to the question of whether the offences charged were extradition offences within the meaning of section 137(3) of the 2003 Act. The offences charged on the indictment included a charge of common assault said to refer to multiple occasions. In Israel common assault is punishable with a penalty of up to 2 years' custody. In the UK the maximum sentence for common assault is 6 months' imprisonment. Had the judge considered that charge in isolation, he would have been bound to conclude that it was not an extradition offence. It does not appear that this issue was at the forefront of submissions before the judge if it was raised at all. Nor was it central to the submissions before us. It was raised by the appellant in the course of submissions in reply. However, we are satisfied that the case should not have been sent to the Secretary of State insofar as extradition in respect of the charge of common assault was requested. To that very limited extent the judge fell into error. But the error will be of no practical effect. The events said to substantiate the offence of common assault will be subsumed within the other offences set out in the first charge on the indictment. Nonetheless, the judge should have ordered the appellant's discharge in relation to the offence of common assault.

Article 3

29. Article 3 of the Convention provides inter alia that no one shall be subjected to inhuman or degrading treatment. In relation to prison conditions and extradition, the principles are well-established. If a requested person wishes to rely on a violation of their Article 3 rights, the burden is on them to establish by evidence "substantial grounds for believing that he or she would, if extradited, face a 'real risk' of being subjected to treatment contrary to Article 3 in the receiving country": *Saadi v Italy* (2009) 49 EHRR 30 at [140]. The test is a stringent one and it is not easy to satisfy: *Dempsey v USA* [2020] 1 WLR 3103 at [43]. If the requested person satisfies that burden, the receiving country then must demonstrate that no violation will occur.

30. Before the judge the appellant argued that there were no decisions in this jurisdiction which provided any assistance on the issue of prison conditions in Israel. He relied on the evidence of George Tugushi. Mr Tugushi has been a member of the CPT since 2005 and has provided expert evidence on prison conditions since 2017. He had no personal experience of the prison system in Israel. Rather, he relied on both internal and external reports prepared in 2020 which in his view demonstrated that systemic problems in Israeli prisons meant that the appellant would be at imminent risk of violation of his Article 3 rights.

31. The appellant conceded that the evidence showed that all prisoners were guaranteed at least 3 square metres of personal cell space. However, Mr Tugushi's evidence showed that cells had inadequate ventilation and were unhygienic and infested with pests. In addition, prisoners were at risk of invasive searches and being subjected to solitary confinement. There was a lack of medical assistance and educational facilities. In those circumstances, the mere fact that cell space was adequate did not mean that the prisons in Israel were Article 3 compliant.

32. The appellant submitted that the available evidence was that, although there had been some acknowledgment by the Israeli government of the problems, there had been no action taken. A significant problem was that there was no adequate monitoring of Israeli prisons. Neither the CPT nor the UN were given access. The internal monitoring lacked transparency. The overall submission was that the cumulative effect of the matters identified by Mr Tugushi satisfied the burden which lay on the appellant.

33. The judge began his consideration of the appellant's submissions in relation to Article 3 with a lengthy recitation of the principles applicable to a category 1 territory. These principles were substantially irrelevant to the appellant's case. We agree with the appellant's submission before us that the judge fell into significant error when he transposed the principles applicable to an EU member state to Israel. Having said that, the judge considered the effect of *Mursic v Croatia* (2017) 65 EHRR 1 which was and is an authority relied on by the appellant in support of his argument that the court had to consider the cumulative effect of adverse prison conditions. The ultimate question is whether the judge's error infected his eventual conclusion that there was no real risk of a violation of the appellant's Article 3 rights.

34. The judge reviewed the evidence of Mr Tugushi which consisted of a digest of the reports of the UN Committee against Torture, the US State Department report on Israel for 2020 and reports of the Public Defender's Office in Israel. The UN had expressed concern about the of period time prisoners could be held in solitary confinement or isolation. The US State Department had noted that thousands of detainees were held in outdated facilities, some of which were unfit for human habitation. Many prisoners were punished by solitary confinement and shackling. The reports of the Public Defender's Office showed that in 16 detention facilities detainees had to endure unbearable heat, poor ventilation and lighting and poor food. Covid had led to removal of visiting rights and of recovery and rehabilitative programmes. There were problems with access to lawyers and inmates complained about poor medical care.

35. The judge found that the weight of Mr Tugushi's evidence was reduced because he had not inspected any Israeli prison. He was satisfied on the evidence received from the Israeli authorities that the appellant would be afforded at least 3 square metres of personal cell space. Thus, the appellant had to demonstrate other factors to enable him

to satisfy the burden which lay upon him. The judge noted that there had been no evidence that the appellant would not have access to sufficient exercise or that the appellant would have insufficient time out of his cell. He concluded that the matters reported by the Public Defender's Office did not come close to demonstrating a real risk that prison conditions on the appellant's return would involve a violation of Article 3.

36. In the appeal the appellant repeats the submissions made before the judge. He applies to rely on fresh evidence, namely the most recent report of the US State Department which it is said demonstrates that matters have not improved since the extradition hearing. He also argues that the judge's decision is fatally flawed because he was treating Israel as if it were an EU state with the presumptions that apply in those circumstances.

37. The judge's error in rehearsing the principles applicable to an EU state was unfortunate to say the least. However, we do not consider this error to have infected his consideration of the evidence. When he came to the substance of his ruling, he observed that Israel, a trusted UK extradition partner, was a signatory to the Universal Declaration on Human Rights, the Convention against Torture and other cruel, inhuman or degrading treatment or punishment and the European Convention on Extradition. These observations were wholly accurate. They were the backdrop to the judge's consideration of the evidence in relation to prison conditions.

38. The fresh evidence upon which the appellant wishes to rely does not satisfy the test in *Hungary v Fenyvesi* [2009] 4 All ER 324. The most recent report of the US State Department adds nothing to the material before the judge. The high point in terms of criticism of general prison conditions is a reference to the 2021 Public Defender's Office inspection report which stated "the Public Defender's Office continued to warn of severe overcrowding in Israeli detention facilities, violating the inmates' rights, including their right to 'respect, privacy, and health.'" Overcrowding per se is not the basis on which the Article 3 challenge is put by the appellant. Moreover, the short summary of the inspection report does not provide sufficient evidence of a potential violation of the appellant's Article 3 rights.

39. The appellant has the burden of establishing a real risk that he would be subjected to inhuman or degrading treatment were he to be returned to Israel and detained in prison there. The judge determined that the matters contained in the reports relied on by Mr Tugushi did not establish such a risk. We consider that he did not err in that conclusion. There was no evidence to indicate that the appellant was someone at real risk of solitary confinement, still less being shackled. He was not someone with any health issues. His case can be distinguished from instances where a requested person for instance has severe mental health issues and the evidence demonstrates a lack of psychiatric care in the relevant prison or prisons. The reference in the US State Department report for 2020 to accommodation being unfit for human habitation was drawn from the Public Defender's Office report for the previous year. The up to date Public Defender's Office report did not repeat that assertion. The judge was entitled to consider that piece of evidence in combination with all of the other evidence. The personal cell space available to the appellant will be at least 3 square metres. That is not determinative of the issue but it is significant.

40. We reiterate that the test to be satisfied for a requested person to establish a real risk of their Article 3 rights being violated is a stringent one. The evidence in this case did not meet the test.

Article 8

41. At the time of the extradition hearing the appellant was married with seven children. Since then the appellant and his wife have had an eighth child but this makes no difference to the argument in relation to the appellant's private life. The appellant is a member of the Haredi community living in Hackney. He works part time as an office assistant in a property business owned by another member of the same community. He gives considerable assistance to his wife in the care of the children. Both he and his wife are Yiddish speakers. They do not speak English.

42. The principles to be applied in relation to interference with a requested person's Article 8 rights are set out in *HH v Italy* [2013] 1 AC 338 at [8]:

> *(1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life.*
>
> *(2) There is no test of exceptionality in either context.*
>
> *(3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition.*
>
> *(4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no "safe havens" to which either can flee in the belief that they will not be sent back.*
>
> *(5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved.*
>
> *(6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life.*
>
> *(7) Hence 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.*

43. *HH* was concerned particularly with how the rights of the children affected by any extradition order should be reflected. The Supreme Court expressed the correct approach in different language in the various judgments. It is usefully summarised by Lord Kerr at [144]:

> *It is unquestioned that in each of these cases, the children's article 8 rights are engaged. As a matter of logical progression, therefore, one must first recognise the*

> *interference and then consider whether the interference is justified. This calls for a sequencing of, first, consideration of the importance to be attached to the children's rights (by obtaining a clear-sighted understanding of their nature), then an assessment of the degree of interference and finally addressing the question whether extradition justifies the interference.*

The judge heard oral evidence from the appellant's wife, from Dr Yoeli, a consultant clinical child psychologist and from Nick Kaufman, a qualified Israeli lawyer. Mr Kaufman's evidence was directed to the issue of the likely penalty were the appellant to be convicted. He considered that the starting point would be two years' imprisonment with the prospect of a longer sentence if the court considered that there were aggravating factors.

44. The appellant's wife said that, whilst she had had emotional and financial support from her religious community, she was concerned that it would be reduced were the appellant to be returned to Israel. It would not be an option for her and the children to move to Israel. The children were happy at school in this country. She had no prospect of accommodation in Israel. She explained that she and the appellant did everything together. The children were very close to their father. Were he to be extradited, "it would break the family".

45. The report from Dr Yoeli, which he adopted as his evidence in chief for the purposes of the extradition hearing, was lengthy. He considered each member of the family separately when assessing the likely effect of the appellant's extradition. The judge described him as "an experienced practitioner who gave his evidence in a measured and thoughtful fashion".

46. In relation to the appellant Dr Yoeli described him as a mature family man and devoted father. He considered that, were he to be extradited, the appellant could regress emotionally so to take him back to the impulsive person he was at the time of the events which had led to the criminal charges. Further, he could suffer such distress were he to be returned to Israel that he could suffer a psychotic breakdown. Dr Yoeli conceded in his oral evidence that this view was speculative and that the appellant had no history of psychosis.

47. Dr Yoeli's opinion was that Mrs Grinfeld would struggle to cope were the appellant to be extradited. He said that she may well lose her ability to function as an individual and a mother. She would be likely to isolate herself. Dr Yoeli acknowledged that this bleak picture had not been reflected in Mrs Grinfeld's own evidence at the hearing. He said that there was a difference between what a person would say to a court and what they would tell a psychologist.

48. Dr Yoeli's report contained a brief assessment of each child. The three younger children were aged six, four and two. They were apparently normal children albeit unusually energetic in the case of the two year old. The children did not express any view themselves about the prospect of separation from their father. The six year old was described by his mother as one of the more difficult children. He had been placed in the school year below his chronological age. Of the four older children, Dr Yoeli said that the sixteen year old daughter was relatively untroubled by recent events, that two of the older boys were untroubled or unperturbed by the prospect of their father's

extradition and that the ten year old boy was frightened that his father would be taken away.

49. The report went on to consider the effect of the appellant's extradition on each child. Dr Yoeli said that the sixteen year old daughter would be devastated. She might develop eating disorders, self-harm and vulnerability to sexual exploitation. Asked at the hearing for his basis for those conclusions, he said that there was an increasing prevalence of those factors amongst girls in the relevant Jewish community. He said that sexual exploitation by a rabbi or a teacher was a possibility. In relation to the ten year old boy, Dr Yoeli said that it was reasonable to predict that he would react extremely badly to the appellant's extradition. He said that the boy may experience depression, self-harm, eating disorders and substance abuse. Dr Yoeli did not indicate that there would be any dramatic effect in relation to the other children.

50. The judge summarised the concluding parts of the Dr Yoeli's evidence at the hearing as follows:

> "He did acknowledge, however, that upon reflection, he ended his report `with a flourish` and that some of the language expressed in the final part of his report may well have been somewhat exaggerated. This appeared to be reference to some of the potential effects of extradition on EG, his wife and their children. He accepted that the suggestion that the daughter might well self-harm or that EG might well suffer a full-blown psychosis was `highly speculative`. In my opinion this was an important concession to be taken into account."

51. The appellant's case at the hearing was that the effects of extradition on the appellant's family would be so devastating that they could only be described as exceptionally severe. The appellant was the lynchpin of the family. Without him the family would be under huge pressure. The public interest in extradition was reduced by (a) the relative lack of seriousness of the offences for which extradition was sought and (b) the passage of time since the alleged offending. As to (b), there was no evidence to contradict the suggestion that the Israeli authorities could and should have acted sooner to request extradition.

52. The judge found that there was a strong public interest in the UK abiding by its extradition obligations. He considered that the criminal conduct was serious. He found that the appellant was a fugitive from justice in that he had left Israel knowing that criminal proceedings in which he had participated were about to conclude with a verdict. On the other side of the balancing exercise, the appellant was leading a settled and law abiding life in the UK and had done so for some years. His evidence was that he was in work and supported his family for whom the consequences of extradition would be catastrophic. The appellant said that he was not a classic fugitive from justice since he had not breached any court order or direction when he had left Israel.

53. The judge's reasons for concluding that the interference with the Article 8 rights of the appellant and his family were not sufficient to displace the public interest in extradition were discursive. The judge placed emphasis on the following factors: the appellant's departure from Israel when he knew that the criminal proceedings were shortly to conclude; the fact that the Israeli authorities for some time had believed that the appellant had remained in Israel which led them to restrict their inquiries to the domestic setting; the creation of the larger family occurred when the appellant knew that the

criminal proceedings against him had not concluded and when he must have realised that the Israeli authorities would not abandon their case against him; the evidence of Mrs Grinfeld and Dr Yoeli was important but did not provide such strong counter-balancing factors to the public interest as to render extradition disproportionate; the support received by the family from the community up to the point of the extradition hearing would not disappear were the appellant to be extradited.

54. The appellant relies on the evidence of his wife and Dr Yoeli to support the proposition that the effect of extradition on his children will be so significant that "exceptionally severe" is the only proper description. Dr Yoeli has updated his report to confirm that his earlier conclusions remain valid. There was and is no evidence to contradict his assessment of the family. The judge failed to reflect the evidence of Dr Yoeli properly or at all in his reasoning. Rather, he took into account irrelevant matters such as the appellant's supposed fugitive status and he exaggerated the seriousness of the offending.

55. The crux of the appeal is whether the circumstances of the appellant's family were such that his removal from the family would result in exceptionally severe consequences. We do not agree with the proposition that the appellant's quasi-fugitive status was irrelevant. It was part of the explanation for the long delay between the proceedings in Israel and the extradition request. In other circumstances such a long delay would be a compelling factor in favour of refusing to extradite the appellant. We also do not consider that the judge exaggerated the seriousness of the offences. It was submitted that an English court may recoil from custody given the circumstances. We find that submission questionable. However, those matters are marginal to the central issue.

56. The judge was entitled to exercise some scepticism in relation to the assertions of Dr Yoeli in relation to the effect of extradition on Mrs Grinfeld and the children. Mrs Grinfeld was hardly sanguine about the prospect of her husband being extradited. Given the support that he gave her with the seven (now eight) children, it was not surprising that she said that it would "break the family". She explained in her evidence at the hearing that this meant that she would be under pressure to look after the family in his absence and that she would suffer. She did not suggest that she would lose the ability to function as a mother. In relation to the sixteen year old daughter Dr Yoeli's report contained internal inconsistency. He said that she was relatively untroubled by recent events i.e. the extradition request. Yet later in the report he went on to say that she would be at risk of eating disorders, self-harm and vulnerability to sexual exploitation. On investigation these risks were identified as being generic. They were not associated with the sixteen year old daughter as an individual. Dr Yoeli conceded that the supposed risk was speculative. He accepted that the language in some parts of his report may have been exaggerated. Having read the report in full, we consider that this concession was inevitable. Dr Yoeli departed more than once from a factually based analysis of the family.

57. There can be no doubt that the effect of extradition on the appellant's family will be significant. It is self-evident that any family of seven (now eight) children involves a partnership between mother and father. For cultural and other reasons this family was and is particularly close. However, substantial though the impact will be of the appellant's extradition to Israel, we do not consider that its consequences will be exceptionally severe. The case put by the appellant was that the effect on the children (or some of them) would be dramatic. On proper analysis the evidence did not support

that conclusion. There was no satisfactory evidence of genuine psychological or psychiatric consequences which would follow the extradition of the appellant. As the judge correctly observed the appellant would not be removed from the family indefinitely. We have been provided with evidence from an immigration practitioner (not before the judge) in relation to the appellant's immigration status were he to be extradited and then convicted in Israel. The evidence unsurprisingly is inconclusive as to what the position would be. It is not sufficient to undermine what the judge said insofar as that had any bearing on the outcome.

58. We are satisfied that the judge did not err in his conclusion that the public interest in extradition outweighed the interference with the Article 8 rights of the appellant and his family. In his reasoning he dealt with the evidence of Dr Yoeli and Mrs Grinfeld in brief terms. However, he had set out their evidence in considerable detail in his factual review.

Conclusion

59. With one minor exception we are satisfied that the judge did not fall into error in relation to any of the issues on which the appellant now relies. The judge should have discharged him in relation to the offence of common assault for the reasons we already have given. To that very limited extent the appeal will be allowed. We require the parties to give effect to this outcome by an appropriate order. Beyond that, the appeal will be dismissed.