Neutral Citation Number: [2023] EWHC 2318 (Admin)

Case No: AC-2022-LON-002507
CO/3342/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday 19th September 2023

Before:
MR JUSTICE FORDHAM

- -

Between:

JAROSLAW HALABIS	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

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Hearing date: 19.9.23

Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge
from the ex tempore judgment delivered in open court.

MR JUSTICE FORDHAM:

Introduction

1. The Appellant is aged 45 and wanted for extradition to Poland. That is in conjunction with a conviction Extradition Arrest Warrant issued on 14 December 2021 and certified on 7 March 2022, on which he was arrested on 25 April 2022. He is wanted to serve 6 years 11 months and 19 days of the overall 7 year custodial sentence, imposed on him in Poland on 4 April 2019 which became final on 23 September 2020. The index offending includes 12 thefts of cars between June 2011 to June 2012 (when aged 33 and 34), typically at night and from empty car parks. District Judge Griffiths (the Judge) ordered extradition on 15 August 2022 after an oral hearing. She discharged the Appellant so far as concerned an offence of failure to pay child maintenance between October 2009 and May 2012, on the grounds this did not constitute an "extradition offence" (Extradition Act 2003 sections 10 and 65).

Section 17

2. Mr Hepburne Scott renews before me the section 17 specialty argument which he advanced unsuccessfully before the Judge. It runs as follows. In the context of an aggregated sentence including a non-"extradition offence", specialty protection requires a mechanism operated by the requesting state to ensure that the sentence served by the extradited person relates only to the offence or offences for which they have been extradited. The Further Information in this case (dated July and August 2022) expressly confirms that surrender to Poland guarantees specialty protection in compliance with Article 625 of the Trade and Cooperation Agreement (TCA). But it also expressly – as Mr Hepburne Scott emphasises unequivocally and from the horse's mouth – confirms that there is no possibility of disaggregating the child maintenance sentence from the overall merged sentence of 7 years. It follows that the protection of a mechanism of disaggregation, or a mechanism of resentencing, discussed in cases like Cokaj v Albania [2007] EWHC 238 (Admin) and Kucera v Czech Republic [2009] 1 WLR 806, is absent. Here, the express recognition of the impossibility of disaggregation means that the requisite compelling evidence has been relied on by the Appellant and the section 17 bar to extradition has been made out, at least arguably.

3. Like the Judge, and like Bourne J who refused permission to appeal on the papers, I am unable to accept that this argument has any viability. In my judgment, it is ultimately a straight re-run of the argument of Counsel (Mr Clayton), described in Brodziak v Poland [2013] EWHC 3394 (Admin) at §39. That was in the context of the same line of authorities (Cokaj and Kucera are discussed) and the predecessor to Article 625 (see §43). Importantly, that was also in a context where an expert report and Further Information had each, expressly, identified the impossibility of disaggregation of the merged sentences which included the non-extradition offences (see §§50 and 52). It was therefore being said that it was "not clear how effect is or can be given … in practice" to the specialty protection in Poland (see §56). The Divisional Court – having anxiously considered these implications (see §54) – found that the circumstances were not sufficiently compelling to displace the strong presumption that Poland would act in accordance with its international obligations in respect of specialty (see §§55-57).

4. The picture in the present case cannot in my judgment, even arguably, be distinguished from that with which the Brodziak court was concerned. Mr Hepburne Scott says that there is a fundamental distinction, because the EU Framework Decision speciality protection had been reflected in a Polish Criminal Procedure Code provision (Brodziak §§43-44, 49), whereas the TCA Article 625 speciality protection has not been said to be reflected in a Code provision. In my judgment, this is not a viable point of distinction with a realistic prospect of success. The lack of clarity as to mechanism is substantially the same as in Brodziak. Moreover, the TCA Article 625 specialty protection is clearly said in the Further Information to have "direct application" in Poland – as Mr Hepburne Scott very fairly pointed out at this hearing – and there is the express guarantee that it will be honoured. The reasoning in Brodziak at §§55-57 would in my judgment, beyond reasonable argument to the contrary, clearly apply.

Article 8

5. That leaves the Article 8 private and family life arguments. Mr Hepburne Scott, in writing and orally, submits that the outcome at which the Judge arrived was and is, at least arguably, wrong. He emphasises the following as what he characterises as very strong counterbalancing factors, weighing in the balance against extradition. There is the very lengthy passage of time since (a) the index offending (to June 2012) and a Polish indictment (June 2014) and (b) the December 2021 Extradition Arrest Warrant. There is the Appellant's productive and blameless life in the United Kingdom since coming here in May 2015, since which time he has been settled and in stable employment throughout, with no criminal convictions. There is the family life through the Appellant's relationship with his partner and her 15 year old daughter, and also the financial support and regular phone contact with his 14 year old son in Poland, plus the maintenance which he sends his daughter in Poland. There are the impacts and consequences of extradition for all of these affected individuals. There is also the unlikelihood that the Appellant would be able to return to the UK. Then there is putative fresh evidence, explaining that the Appellant's ex-wife has lost her employment in Poland and the Appellant has been sending additional funding to pay bills and buy his son's clothes. I interpose that the CPS in an email to the Court invites caution in relation to that uncorroborated and undocumented picture. But I make clear that, for the purposes of today, I proceed on the basis that it is an accurate picture. All of these features are relied on, alongside the other features of the case.

6. Like the Judge, and like Bourne J – and notwithstanding the putative fresh evidence – I think this is a clear case in which the strong public interest features that support extradition decisively outweigh those capable of weighing against it. This is a substantial sentence of 7 years, nearly all of which is required to be served. The Appellant came to the UK in May 2015 knowing about the proceedings in Poland and was unimpeachably found by the Judge to have come here as a fugitive. His whereabouts were not known to the Polish authorities, and it was in February 2021 that information came to light that he was living in the United Kingdom, following which a search was ordered and the Extradition Arrest Warrant was issued. The passage of time has to be seen in that context. So does the relationship with the partner, with whom the Appellant had moved in prior to his arrest in these extradition proceedings, and the relationship with her daughter. In a careful and comprehensive judgment, the Judge identified the impacts and implications for all those affected.

That included the 15 year old daughter of the partner, for whom the Appellant has become a father figure. It also includes the 14 year old son in Poland for whom the Appellant provides support. It includes the daughter – in respect of whom maintenance has been being paid – and who was described by the Judge as nearly 18 years old as at August 2022. It also includes the impediment which extradition introduces so far as any return to the United Kingdom is concerned. I have considered afresh all of the features of the case and can see no realistic prospect of this Court at a substantive hearing concluding that the Article 8 outcome was wrong. I will refuse permission to appeal and formally refuse permission to adduce the fresh evidence it being incapable, alongside the other evidence, of being decisive.

19.9.23