



Neutral Citation Number: [2023] EWHC 2751 (Admin)

Case No: CO/3201/2022;  
AC-2022-LON-002403

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 2<sup>nd</sup> November 2023

**Before :**

**THE HON. MRS JUSTICE THORNTON DBE**

**Between :**

**MICHAL JAGIELLOWICZ**

**Appellant**

**- and -**

**REGIONAL COURT IN ELBLAG (POLAND)**

**Respondent**

**Mary Westcott** (instructed by **Birds**) for the **Appellant**  
**Tom Cockroft** (instructed by **CPS**) for the **Respondent**

Hearing date: 12<sup>th</sup> October 2023

**Approved Judgment**

This judgment was handed down remotely at 14:00 on 2<sup>nd</sup> November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....  
**THE HONOURABLE MRS JUSTICE THORNTON DBE**

**The Hon. Mrs Justice Thornton :**

**Introduction**

1. The Appellant appeals against the order, dated 2 September 2022, made by District Judge Zani, for his extradition to Poland. The order follows the issue of a European arrest warrant on 25 September 2020 by the Regional Court in Elblag, Poland, in relation to the activation of a suspended sentence of 1 year 6 months. The sentence was imposed for two offences of supplying drugs to a minor, in 2006, and fraud, in 2009, for which the Appellant was sentenced in February 2015. The Appellant is sought in relation to the partial non-payment of compensation which was a condition of the suspended sentence in relation to the fraud. On the information before the Court, the Appellant has complied with the sentence for the drugs offence.
2. The Appellant says the District Judge was wrong to order his extradition which is barred by virtue of section 21 Extradition Act 2003 as incompatible with his private and family life.

**Factual background**

3. The following background was common ground.
4. The Appellant is now 33 years old. In 2006, aged 17, he committed the first of the offences for which extradition is sought, namely the supply of marijuana to a minor. Information in the arrest warrant explains that in the period from May 2006 to June 2006 he gave marijuana to a minor in the amount of at least 2.5 grams.
5. No action was taken against him at the time. In 2008 – 2009 he moved to, and worked in, England before returning to Poland. In 2009, age 19, he committed the second offence for which extradition is sought, dishonestly obtaining a loan of 9,760 PLN from ING Bank by making a false written statement about his employment and wages.
6. Further information from the Polish Authorities indicates that an investigation into his offending was opened in March 2010 but no action had been taken by October 2010 when the Appellant returned again to the UK to work. He remained in the UK from 2010 – 2014 before being extradited to Poland in 2014 for a separate drugs offence (the supply of amphetamines), for which he served a 16 month prison sentence before being released on parole.
7. In February 2015, whilst still in prison, he pleaded guilty to the two offences for which extradition is sought. He was sentenced to a custodial term of 1 year 6 months, suspended for 4 years, on condition of supervision by the probation service in Poland and the payment of compensation. On his release from prison in March 2016, he reported to probation as required by the conditions of his suspended sentence.

8. On 8 June 2016, his daughter Alina was born in Poland. In July of the same year, he married his wife. In Autumn 2017, he left Poland and came, lawfully, to England, maintaining contact with the Polish probation service, as he was required to do so.
9. Payment of the compensation for the fraud was due by February 2019. By then, however, the Appellant had paid only one-third of the compensation, leaving two-thirds (approx. £1250) due for payment. On 28 March 2019, the court in Poland ordered the activation of the suspended sentence.
10. On 8 June 2019, his daughter Natalia was born in the UK. The Appellant applied to defer service of the prison term for family reasons until 10 March 2020. From the information available, it is unclear whether he also applied to defer payment of the compensation amount. In any event, no further payments were made.
11. On 11 March 2020, he was summonsed to surrender to custody for breach of the conditions of his suspended sentence, but failed to do so.
12. A warrant for his arrest was issued by the Regional Court in Elblag, Poland on 25 September 2020. He was arrested under that warrant on 29 December 2021 at his home address in Yorkshire. He was briefly detained in custody, for 2 – 3 days over the new year, and was then subject to an electronically monitored curfew for 3 months followed by weekly (and then fortnightly) reporting to the police station.
13. On 4 August 2022, an extradition hearing took place before the District Judge. Extradition was ordered on 2 September 2022.
14. The Appellant appealed. Permission to appeal was granted by Mr Justice Julian Knowles on the basis that it was arguable that the Appellant was not a fugitive and the District Judge's finding was wrong in this regard. If so, the Article 8 balancing exercise would need to be re-taken.
15. By an application notice dated 4 October 2023 the Appellant applied to adduce evidence to update the court on his family life since the hearing before the District Judge.

### **The ruling of the District Judge**

16. Before the District Judge, the Appellant gave evidence. In relation to the offending, the Appellant said that when he was 17 he smoked marijuana with another boy about the same age as him for two months. The boy later reported it to the police, but the Appellant was never formally questioned about it. He accepted he made a false application for a bank loan by putting the stamp of a company on the application form, even though he was not working for them. In relation to his family life in the UK, he said he has a good job at a company assembling folding packages and works each weekday. He earns about £200 - £400 a week depending on the hours. He lives at home with his wife and children who are 3 and 4 years old. His wife receives universal credit, but the family rely on his income to pay the rent, bills and council tax. He said he plays an active part in family life and normally takes his daughters to and from school and cooks family meals and takes the children out at the weekend. His family will remain

in the UK if he is extradited. They have settled status. He said he had given money to his mother to pay the compensation for him, but she had not done so.

17. In recording the Appellant's evidence in his ruling, the District Judge said he did not accept the entirety of it, in particular that the Appellant had given money to his mother to pay the compensation. It is to be inferred that the Judge did not question the other evidence given by the Appellant.
18. The Appellant's wife provided a written statement which was not challenged. She said that although she received benefits it would be very difficult to manage financially and to pay all the bills, council tax and rent in the event of extradition. The children are close to their father. She said she spoke almost no English so was reliant on the Appellant to help with matters like doctors' appointments and the children's schools.
19. In his ruling, the District Judge concluded that the Appellant was a fugitive having failed to surrender to custody on 11 March 2020. With regards to the Article 8 assessment exercise, the Judge directed himself on the law, as to which there is no challenge. He listed the factors said to be in favour of granting extradition and in favour of refusing extraction. In favour of extradition was the weighty public interest in the UK upholding its extradition obligations; the seriousness of the offending; and the fact that the Appellant was a fugitive from justice. The factors said to be against extradition were that the Appellant has been settled in the UK since 2017 in employment with fixed accommodation and a family. He has led a law-abiding life in the UK and he is not a fugitive. The District Judge considered extradition would not be a disproportionate interference for the following reasons:
  - (i) *It is very important for the UK to be seen to be upholding its international extradition obligations. The UK is not to be considered a 'safe haven' for those sought by other Convention countries either to stand trial or to serve a prison sentence.*
  - (ii) *In my opinion, the criminal conduct set out in the EAW is serious and, in the event of a conviction in the UK for like criminal conduct, a prison sentence may well be imposed.*
  - (iii) *This court finds that the requested person is a fugitive from justice. The reasons for this finding are set out above.*
  - (iv) *MJ is not a man of good character. As previously mentioned, he was previously extradited from the UK to Poland in November 2014 to serve a 2 year sentence for supplying controlled drugs (Amphetamines).*
  - (v) *It is appreciated that there will be hardship caused to MJ and to his wife and their children. However, that of itself is not sufficient to prevent an order for extradition from being made. I am satisfied that MJ's wife has appropriate access to UK benefits for herself and the children. She has the option, should she so choose, to return to Poland with the children.*
  - (vi) *As this court has found as a fact that MJ is a fugitive from justice, this finding brings paragraph 39 of the decision in **Celinski** above into consideration. I do not find that there are such strong counter-balancing factors as would render extradition Article 8 disproportionate in this case.*
  - (vii) *I take into account that there may well be some Brexit uncertainty for this requested person, were extradition to be ordered...*

*However I do not find that such uncertainty tips the Article 8 balance sufficiently in favour of the requested person such as to make return Article 8 disproportionate.*

- (viii) *I also take into account, in an Article 8 balancing act context, the time that has passed from when the alleged offending conduct is said to have taken place to date, but I do not find that this sufficiently tips the scales sufficiently in favour of the RP so as to render surrender Article 8 disproportionate for him, his wife or children.*
- (ix) *I would wish to add that even were it to be considered elsewhere that MJ is not to be regarded as a fugitive, I remain of the view that it would still not be Article 8 disproportionate – in respect of the rights of MJ, his wife and / or the children -to order return.”*

### Grounds of appeal

20. The Appellant appeals on the basis the District Judge came to the wrong decision on Article 8. By the start of the hearing, it was common ground that the District Judge erred in treating the Appellant as a fugitive and the Article 8 balancing exercise must therefore be considered afresh by this Court.

### Evidence to update the Court on family life

21. There was an application to rely on evidence by the Appellant about his life since the hearing before the District Judge in August 2022. There was no objection to the introduction of the evidence for the purposes of the fresh assessment by this Court.
22. The Appellant explains that family life in most ways is the same. His children are now 7 and 4 and both are happy and settled in school. Money continues to be very tight. Council tax has gone up and he expects utility bills to rise. He works at a compost company earning £350 a week. He has now paid the amount of compensation due as a condition of his suspended sentence. He has also paid the costs of the extradition hearing before the District Judge. He explains that it has not been easy for the family not knowing how the present proceedings will turn out, but they are trying to stay hopeful that something from so long ago will not mess up what his family has now. His wife and family could not relocate to Poland as the UK is their home.

### Legal framework

23. Pursuant to section 21(1) of the Extradition Act 2003, the District Judge was required to decide whether the Appellant’s extradition was compatible with his right under Article 8 of the European Convention on Human Rights to respect for his private and family life. It is not disputed that extradition will interfere with his right and the relevant question for the court is whether extradition is a disproportionate interference with the right.

24. On an appeal, the High Court may allow the appeal if the court is satisfied that the Judge ought to have decided a question before him/her at the extradition hearing differently and if s/he had decided the question in the way s/he ought to have done, s/he would have been required to order the person's discharge (s27(4) Extradition Act). In short, the question for the Appellate Court when considering the Article 8 balancing exercise is whether or not the District Judge made the wrong decision. The Appellate Court is entitled to stand back and say that the question ought to have been decided differently because the overall evaluation was wrong. Crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed (Love v USA [2018] 1 WLR 2889; [2018] EWHC 172 at [26]). Findings of fact, especially if evidence has been heard, must ordinarily be respected. The focus must be on the outcome, that is on the decision itself. Errors and omissions in the District Judge's reasoning do not of themselves necessarily show that the decision on proportionality itself was wrong, albeit the Judge's reasons must be considered with care (Polish Judicial Authority v Celinski & Ors [2016] 1 WLR 551; [2015] EWHC 1274 (Admin) ("Celinski")).
25. Counsel were agreed that in the present case, where it was common ground that the Judge fell into error in finding the Appellant was a fugitive, it would be wrong and artificial to ignore the other findings of the Judge. Nonetheless the balancing exercise must be reconsidered by this Court, reflecting on the implications of the Judge's error (and any others that are identified) and taking into account the updated evidence on the family life since the hearing before the Judge. The principles in paragraph 8 of the Supreme Court's decision in H(H) v Deputy Prosecutor of the Italian Republic [2013] 1 AC 338 ("H(H)") should govern the Court's fresh examination of the way in which extradition would interfere with family life:

*"(1) ...the court has ... to examine carefully the way in which [extradition] 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."*

26. The difference between the parties was that, for the Appellant, it was said that the overall evaluative outcome by the Judge was wrong because of a combination of errors. For the Judicial Authority, it was said that whilst the Judge erred in assessing the Appellant as a fugitive, he reached the right outcome for the other reasons he gave.

**Matters in favour of granting extradition**

27. The District Judge relied on three factors in favour of granting extradition.
28. The first, as to which there is no challenge, is the importance of the UK upholding its extradition obligations. 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 (H(H) at [8]). I acknowledge the constant and weighty public interest in this regard.
29. The second factor was that the Judge concluded that the Appellant was a fugitive from justice. As is common ground, the Judge erred in this respect. This is because the Appellant was permitted to leave Poland when he did in the autumn of 2017. There was no challenge to, or doubt expressed about the Appellant's evidence that his supervising probation officer knew where he was living and working in England during this time. It was only after he failed to pay the full amount of compensation due and the suspended sentence was activated on 28 March 2019 that any culpability could attach to him. As Counsel for the Appellant put it in her written submissions, the Appellant stayed away rather than fled. Consequently, this case does not engage the public interest consideration that the UK should not be a safe haven for fugitives from justice. Nor does the present case engage paragraph 39 of Celinski, to which the District Judge directed himself, and which provides that the important public interest in preventing the UK being a safe haven for a fugitive will require very strong counter-balancing factors before extradition becomes disproportionate.
30. The third factor relied on by the Judge in favour of extradition was the seriousness of the Appellant's offending. He concluded that the offending was serious and may attract a prison sentence in the UK. On behalf of the Appellant, it was said that this District Judge was wrong in this regard. Application of the relevant domestic sentencing guidelines demonstrates the offending would be unlikely to attract a prison sentence. On behalf of the Judicial Authority, it was said that Celinski emphasises it will be a rare case in which it would be appropriate for the domestic court to consider whether the sentence was very significantly different from that which a UK court would impose.
31. The sentence of the Polish Court must be accorded a proper degree of confidence and respect. A requesting state is entitled to set its own sentencing regime and levels of sentence and it is not for the extradition court to second guess sentencing law or policy, including any policy in relation to suspended sentences. The Poland criminal process has reflected the seriousness of the Appellant's criminal conduct by means of a sentence of 1 year 6 months. Nonetheless, the Court did not consider it necessary to impose an immediate custodial sentence and suspended it for four years, on conditions.
32. The District Judge considered that the offending may attract a prison sentence in the UK. No reasons for his conclusion were given. I am unable to agree with his

assessment. The supply of drugs was to another minor and involved a small amount of marijuana. There is no evidence to indicate the drugs were sold for profit. Applying the relevant sentencing guidelines, the available facts indicate a lesser role and category 4 in the relevant guideline (which cites 100g, which is higher than the 2.5g index offence) and which identifies a starting point of a low-level community order. I am not prepared to accept the submission by Counsel for the Judicial Authority that the Appellant had engaged in street dealing given there is no evidence before the Court that the drugs were sold. The fraud offence involved a dishonest statement about income in order to obtain a bank loan of approximately £1,788 when the Appellant was 19 years old, with no suggestion of similar offences before or since. Assuming “medium culpability” and “category 5” harm (starting point £2,500) the UK guideline starting point is a medium level community order. In addition, the offences were committed when the Appellant was a youth. Counsel for the Judicial Authority accepted that the domestic Youth Sentencing Guideline indicates that a reduction in sentence of a half to two thirds of an adult sentence may be appropriate to reflect the youth of an offender. The guideline emphasises that young people are not fully developed and have not attained full maturity which can impact on their decision making and risk-taking behaviour.

33. The weight to be given to the public interest in extradition will vary according to the nature and seriousness of the crimes involved. I use the analysis of a UK sentence as a ‘cross check’ about the comparative seriousness of the offending behaviour (see H(H) [2021] 1 AC 338 at [8]; Norris v USA [2010] UKSC 9 at [109] and Prusianu v Romania [2023] 1 WLR 495; [2022] EWHC 1929 (Admin) at [48]).
34. The District Judge referred to the Appellant’s previous extradition from the UK to Poland in November 2014 to serve a two year sentence for supplying amphetamines. Counsel were agreed that this could be relevant to an assessment of the seriousness of the offending. There is, however, sparse detail in relation to that offending. In particular, it is not known when the conduct took place (before or after the offending in 2006/2009); whether it was also committed whilst the Appellant was a youth or not and whether it was taken into account in the sentencing exercise for the extradition offences. In the circumstances, in my judgment, there is insufficient information to take it into account in assessing the seriousness of the extradition offending.
35. Drawing together the factors relevant to seriousness, I conclude that, contrary to the conclusion of the District Judge, the index offences, whilst not trivial, are of no great gravity and they were committed when the Appellant was in his youth.

### **Factors against extradition**

36. To date, seventeen years have passed since the commission of the first offence. The District Judge said he had taken account of the delay but that it did not tip the scales in favour of the Appellant. He did not express any view on its length. At the hearing there was a dispute between Counsel as to culpability for the delay between the offending in 2006/2009 and the sentence imposed in February 2015. The further information is not clear as to the precise sequence of events and I am not prepared to accept culpability on the part of the Judicial Authority (or the Appellant). Nonetheless, the fact remains that seventeen years is a considerable period of time and is relevant to the Article 8 question (H(H) at [46] “the overall length of the delay is relevant to the Article 8 question. Whatever the reasons, it does not suggest any urgency about bringing the Appellant to



justice, which is also some indication of the importance attached to the offending” (Lady Hale)).

37. In the years that have passed since the offending the Appellant has developed a law-abiding family life in the UK with a wife and two children. It was common ground that he is of good character in this country. On behalf of the Appellant, it was said that the District Judge’s analysis of the impacts of extradition on the children was cursory and did not give them the primary consideration required by H(H). On behalf of the Judicial Authority, it was said that the Judge’s assessment of the impacts on the children was succinct, but his conclusions (that the Appellant’s wife would have access to benefits and family could return to Poland) were not unreasonable.
38. On the evidence before the District Judge, the Appellant’s youngest child (then age 3) was born in the UK and has lived all her life here. His eldest child, then aged 6, has lived here since she was a year old. The family have made their home in Yorkshire since 2017. The children are close to their father who regularly takes them to school and spends time with them after his work and at the weekends. Any relocation to Poland will mean the loss of their settled life at school in England in a country they have resided in for all, or nearly all, of their lives. Conversely, however, I accept they are young enough to suggest they will adapt to a new life in Poland should their mother choose to relocate on extradition. There are no compelling reasons why relocation to Poland would be difficult. They will lose their close relationship with their father for the duration of his custodial sentence but wherever they reside, they will still be cared for by their mother. As to finances, the family will lose their main breadwinner in the event of extradition and will need to rely on benefits to remain in this country.
39. The District Judge concluded that there will be hardship caused to the Appellant, his wife and children, on extradition but that the hardship was ‘of itself is not sufficient to prevent an order for extradition from being made’. I accept that the impacts on the family cannot be said to be exceptionally severe. Nonetheless, I remind myself that a search for ‘exceptional’ or ‘unusual’ impacts runs the risk of suggesting that the public interest in extradition is the same in every case rather than that the competing interests (public and private) must be weighed against each other. Such a formulation may also divert attention from consideration of the potential impact on extradition of the particular person involved (Norris v USA [2010] UKSC 9 at [109]). I also take into account the analysis of Lord Judge in H(H), that whilst it should be rare for extradition to be refused on the basis of the interests of dependent children if the sentencing courts here would be likely to impose an immediate custodial sentence, their interests may become relevant in the event the sentencing courts here would impose a non-custodial sentence [128-132]. As explained above I have concluded that a domestic court would have been unlikely to impose a custodial sentence.
40. In this respect, I also take account of the submission by Counsel for the Appellant during the hearing as to the absence of prosecutorial discretion or any proportionality check undertaken by the Polish authorities before the arrest warrant was issued for the Appellant’s breach of a suspended sentence. Counsel’s submissions in this regard were not challenged. In H(H), it was said that the Court can take notice of the fact that no prosecutorial discretion is exercised by the Polish authorities when deciding whether or not to apply for the issue of an EAW, no matter how comparatively minor the offences, how much time has elapsed since they were committed, and how respectable the life which the offender has led since then [45].

41. Turning then to developments since the extradition hearing. The Appellant has now paid the outstanding amount of compensation and has therefore complied (belatedly) with the requirements of his suspended sentence. He has also paid the costs of the proceedings before the District Judge. He has been punished, to a degree, as a result of these proceedings, having been detained (briefly) on arrest and subsequently subject to curfew followed by reporting requirements. The Appellant has given unchallenged evidence in his fresh evidence that he and his family have been living under the strain of this extradition case for almost two years by now.
42. The Appellant's children are now a year older. They are 7 years and 4 years. They are settled at school in Yorkshire. Their ages mean they are likely to struggle to understand their father's departure in the event of extradition and the length of it (H(H) at [44]). They will suffer emotional and financial hardship on extradition.
43. Whilst there is a strong and constant public interest in the UK honouring its extradition obligations, the offending in this case is comparatively minor and it was committed seventeen years ago when the Appellant was a youth. He is now 33 years old and has developed a law-abiding family life in this country.

### **Conclusion**

44. For the reasons set out above, I have reached the conclusion that, on balance, the impact of extradition will be a disproportionate interference with the Appellant's family life in the UK and the appeal should be allowed.