



Neutral Citation Number: [2023] EWHC 993 (Admin)

Case No: CO/916/2019

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 09/05/2023

**Before :**

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

**PIOTR STEPIEN**

**Appellant**

**- and -**

**THE CIRCUIT COURT IN SWIDNICA, POLAND**

**Respondent**

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**Gemma Lindfield** (instructed by **McMillan Williams Solicitors**) for the **Appellant**  
**Thomas Hoskins** (instructed by **the CPS Extradition Unit**) for the **Respondent**

Hearing dates: **2 November 2022**  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 9 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## Mr Justice Julian Knowles:

### Introduction

1. The Appellant appeals the decision of District Judge Blake sitting at the Westminster Magistrates' Court on 1 March 2019 to order his extradition pursuant to the Extradition Act 2003 (the EA 2003). The single ground of appeal is that the decision of the district judge to reject the argument that extradition was barred by reason of the Appellant and his family's right to a private and family life pursuant to Article 8 of the European Convention on Human Rights (ECHR) was wrong – or, more precisely, that I should reach a different conclusion on the material pertaining to that issue as it is now.
2. A primary basis for the argument on the appeal is that the district judge based his decision that extradition would not be a disproportionate interference with Article 8 on a number of offences, some of which (including by far the most serious offence, a sexual offence against a minor) have now fallen away in circumstances which I will describe, so that the factual matrix against which Article 8 is to be judged has fundamentally changed.
3. Ms Lindfield for the Appellant said when the matters for and against extradition are now weighed in the manner required by the well-known case of *Celinski*, the balance firmly comes down against extradition. Indeed, she emphasised that the district judge himself said that if the only offences he had been considering were the offences which remain now, he himself may have discharged the Appellant under Article 8. I will return to this point later.
4. Mr Hoskins for the Respondent fairly accepted that the position had now changed, but nonetheless sought to uphold the district judge's decision.
5. I also accept that the position has now changed, and also that there is evidence (discussed below) which was not before the district judge relating to the welfare of the Appellant's children in particular. I am prepared to admit this evidence, as I prefer to have the up to date position and a number of years have gone by since the evidence was produced about the Appellant's children.

### Factual background

6. There have, over time, been several EAWs in respect of the Appellant, only one of which now remains. The proceedings have been a bit convoluted, but the position is as follows.
7. The three arrest warrants are, or have been:
  - a. **EAW 1 (III KOP 23/15)**, which is the EAW before me on this appeal court was issued on 27 March 2015 and certified by the NCA on 2 January 2016.
  - b. **EAW 2 (III KOP 72/12)** was issued on 20 January 2016 and certified by the National Crime Agency ('NCA') on 2 February 2016.

- c. **EAW 3 (III KOP 35/20)** was issued on 13 August 2020 and certified by the NCA on 15 September 2020.

**EAW 1 (III KOP 23/15)**

8. EAW 1 is an accusation warrant for five offences of dishonesty. In summary terms, it alleges that the Appellant used deception to obtain various (fairly low value) goods and services such as mobile phone contracts and digital television contracts. The offending is said to have taken place in 2009/2010.
9. The Appellant was not arrested or charged with these offences, a national search was issued but because the Appellant was said to be 'in hiding' he was unable to be notified of the charges, his rights or his obligations. He was nor forbidden from leaving the country.
10. On 26 September 2011 a charge was issued for the first two offences and by 12 September 2013 all five matters were made the subject of a charge.
11. On 26 and 30 September 2013, the court ordered the Appellant's provisional detention and issued a warrant for the Appellant's arrest.

**EAW 2 (III KOP 72/12)**

12. EAW 2 has had two separate iterations during the course of the present proceedings:
13. It was before District Judge Blake in its first iteration as a mixed accusation and conviction warrant for five offences: two accusation matters and three conviction matters.
14. Following District Judge Blake's order for extradition on the first iteration of EAW 2, it was subsequently withdrawn during the course of appeal proceedings and reissued as a mixed accusation and conviction warrant but only for four offences: *one* accusation matter and *three* conviction matters. This was one of the two EAWs considered by District Judge Ezzat upon which the Appellant was discharged in a judgment dated 22 July 2021 on the grounds of Article 8.
15. In summary, these two iterations of the warrant stated that the Appellant committed various offences of dishonesty (theft/fraud); burglary; and, most seriously, unlawful sexual intercourse with a person under 15 years old. The offending was said to have gone back to 2007. The sexual offending took place in 2007 and 2008. This was one of the conviction offences, for which the Appellant received a suspended sentence in Poland which was later activated for breaches of his probation conditions.

**EAW 3 (III KOP 35/20)**

16. EAW 3 is a conviction warrant for a single offence, namely that on 21 September 2007, in Dolny Slask, the Appellant and another broke the window of a news kiosk and stole magazines worth PLN 32.80 (c.GBP 6). He received a suspended sentence which was later activated when he committed further offences.

## The decision of District Judge Blake

17. The judge's judgment is dated 1 March 2019. There has therefore been some delay in this case, partly due to the pandemic but also partly, Ms Lindfield submitted, due to the Polish authorities having pursued an unmeritorious appeal against the decision of District Judge Ezzat discharging the Appellant, which delayed the hearing of this appeal.
18. Whilst the Appellant is to blame for the delay since the offending, having left Poland as a fugitive (a finding by the judge which is not and cannot be challenged before me), it seems to me he has not been responsible for the delay in the currency of these extradition proceedings, which have now been going on for some years since he was first arrested on 6 November 2018.
19. The two EAWs before the district judge were EAW 1 and EAW 2 (in its first iteration).
20. In relation to Article 8, the judge conducted the *Celinski* weighing exercise at [17]-[18] of his judgment (see *Polish Judicial Authority v Celinski* [2016] 1 WLR 551).
21. Among the factors weighing in favour of extradition he found to be that the Appellant had been convicted of the sexual assault of a child for which he had received a suspended sentence, which he had breached. Among the factors against were that one of the Appellant's children, whom I will call A, has a chromosomal disorder and the evidence showed that separation from the Appellant would have a detrimental impact on the Appellant's children.
22. At [19]-[20] the judge said:

“19. I have considered the necessary balancing exercise and had regard to the provisions of s 21A with regard to proportionality and other specified matters. I am very concerned that [A] will suffer as the whole family will if I order the return of the RP. It will inevitably be a time of emotional and financial hardship for the family. The Independent Social Worker identified the effect and damage which may be caused to this family. The RP brought this upon himself and his family by fleeing Poland and ignoring the order of the courts and further committing offences during the period of the suspended sentence. I recognise the delay in this but it was caused the conduct of the RP.

20. Had the RP only faced the allegations and convictions of fraud, theft and burglary I might have been persuaded that it would be disproportionate to his and his families Article 8 rights (most particular, the needs of [A]), to order the RP's return. When I have regard to the breach for the sexual assault on a child however I have concluded that the balance falls in favour of ordering extradition in this case. The gravity of this offence is such that despite the powerful argument with regard to the effect of extradition on the RP and his family I consider I must order extradition in this case. In the circumstances [I]t is

appropriate that I order the RP's extradition on both the outstanding EAWs."

23. As I have said, following this judgment EAW 2 was withdrawn and replaced with a second version, on which District Judge Ezzat discharged the Appellant in July 2021 on Article 8 grounds.
24. So it is that the Appellant now faces extradition merely on the (very minor) offences of dishonesty on EAW 1

### **The evidence about the Appellant's private and family life**

25. The district judge set out the Appellant's evidence at length about his family circumstances, and also dealt in detail with the procedural history.
26. In relation to Article 8, the Appellant relied on a report from a social worker, Samantha Ashley, dated from January 2019. On whether the family could relocate to Poland, she said that she had:

"80 ... first considered the possibility of Ms Horniak relocating to Poland with the children in the event that Mr Stepien is extradited. I have considered the fact that the family have such as the family's limited resources, there is a lack of support networks in Poland, they have no accommodation in Poland or income and will in my be at risk of destitution and unable to meet the children's basic needs. Furthermore, [A] had a disability which gives rise to a number of additional needs which are currently being managed with input of various specialist services in the UK."

27. In relation to A specifically she concluded:

"83. In considering my experience of working with children with such profound difficulties and [A]'s individual circumstances; I am of the view that having to return to Poland is likely be too difficult for him to cope with and would in my view cause him unnecessary distress."

28. In terms of the family staying the UK if the Appellant were extradited, she concluded:

"85. The parents have explained in great depth the difficulties that they encounter with [A] on a daily basis, and I believe that that Mr Stepien's removal from the family will make an already difficult situation significantly worse. This will in my view be extremely stressful for Ms Horniak and could result in deterioration in her emotional wellbeing as a result of her feeling overwhelmed with the family's circumstances.

...

95. In [A] case in particular, it is likely to cause too much unnecessary disruption and instability and it would be unfair to expect a child with his level of need to adapt well to his father leaving the family home and having to change schools. It would be unfair and unduly harsh to penalise him for his father's mistake. Additionally, I would not recommend changing to a specialist school after he has already enjoyed 5 years of education within a mainstream setting."

29. Between [105] to [107] Ms Ashley drew the following conclusions about attachment, particularly in relation to A:

"105. Separation from his father could result in [A] developing insecure ambivalent or anxious resistant patterns of attachment as identified by Ainsworth 1971 (cited by Bowlby 1998) in which the attachment figure is inconsistently available, This results in the individual believing that their needs may not be met and displaying signs of separation anxiety and being clingy.

106. Insecure or anxious avoidant attachment styles of attachment leaves the individual believing that that not only will their needs not be met but that they will be rejected (Bowlby, 1988). This is usually the result of parental emotional neglect when the child approaches them for comfort. This can result in them becoming emotionally self-sufficient and could later result in a diagnosis of narcissism. Whilst I am not suggesting that [A] will be subject to deliberate acts of neglect; it is my assessment that he could interpret his father's disappearance as rejection. Additionally, with his mother not being in a position to manage devoting enough time to the individual children, it could result in them all feeling rejected by her and their father.

107. Ainsworth (1971) (cited by The University of East Anglia, 2019) concluded that those with this type of attachment pattern can begin to repress their emotions and become self-reliant and may have difficulties expressing emotions within relationships in adulthood. Therefore, having considered the research evidence regarding attachments, I am of the view that separating the children from their father could have a long lasting damaging impact upon their attachment with their father and possibly with other adults in later life."

30. Ms Ashley conclusion at [112] was as follows:

"112. Mr Stepien is a protective factor in the lives of his children and his removal from their lives will in my view cause significant disruption to the close relationship the children currently enjoy with their father. It will also put them at risk of

developing insecure attachments, remove much needed practical, emotional and financial support from their lives and be detrimental to their physical and emotional wellbeing. Furthermore, the negative impact upon their lives could be long-lasting and extend well into adulthood, affecting their life chances. Therefore, taking these factors into consideration, it is my assessment that Mr Stepien's extradition will not be in their best interests and may in fact subject them to unnecessary harm."

31. She went on to conclude that for a single parent to look after the three children would place them at risk of harm (at [113]):

"113. It is my assessment that caring for the 3 children, one of whom has a disability is far from ideal for a single parent to do alone and may expose the children to risk factors that place them at risk of harm. For example, her ability to provide the required level of supervision to keep all 3 of the children safe might be compromised as a result of [A's] often challenging behaviour."

32. A welfare report under s 7 of the Children Act 1989 from Gemma James, the allocated social worker for the Appellant's family since September 2020, dated May 2021 and thus not before District Judge Blake, indicates that initially the family were the subject of a child protection plan due to the Appellant's drug use, unstable mental health, criminal activity and the safeguarding risk this posed to the children. This was stepped down in January 2021 and social service involvement ended in May 2021.
33. It can be summarised as follows.
34. The Appellant's eldest child, A (then aged 11), suffers from a deletion of chromosome 2 which 'impacts upon severe developmental delay and behavioural difficulties'. When the family experienced 'difficulty' due to the Appellant's offending and mental health '[A] displayed challenging and escalating behaviour', which was characterised by Miss Horniak (the Appellant's partner) as 'upset and unsettled'.
35. [A] is in full time education in a special school, which meets his educational needs. He needs support with food preparation, school and ensuring his routine is not disrupted.
36. Ms James indicated that [A] is unlikely to understand the reasons for his father's removal and 'removing [the Appellant] for a large length of time would be emotionally detrimental to [A] who relies on his routine and support from his family to make him feel safe and secure in his environment.
37. The Appellant's second child, M, then aged 10, attended a mainstream primary school, is independent in her needs but requires supervision, and if the Appellant was removed the 'concern would be the impact on her self-confidence and emotional wellbeing' which would be 'greatly impacted'.
38. The Appellant's third child, [R], then aged four, 'is secure in his family unit and any disruption would affect him as he loves his family very much'.

39. In respect of [A], Miss Hornaik is ‘the main carer for the children and Mr Stepien’ she is able to “manage the children’s basic needs eg food and clothing if Mr Stepien would be extradited but she would not be able to get the children to school’. The local authority would assist with school transport.
40. The nature of the input from the local authority could not be assessed at the point of providing the report it is not possible to predict the effect of extradition presently.
41. The impact of the Appellant’s extradition ‘may have a detrimental affect (sic) on the children emotionally, a referral may need to be made for mental health support. If Mr Stepien is not in the home this may impact their school attendance as mother may struggle to get three children to three different schools, mother may struggle to attend all appointments and meet all the children’s needs without support’, and ‘it would be very hard for one parent to complete these tasks on their own due to the needs and ages of the children’.
42. In his judgment of July 2021 at [47]-[48], District Judge Ezzat said this, having considered Ms James’ report at length:

“47. It is evident that the impact on the RP’s family of his extradition will be devastating. The impact goes well beyond the usual financial and emotional upset and upheaval experienced when any parents is separated from a dependent family. The RP’s absence will have a dramatic impact in terms of [A]’s emotional state and his attendance at school.

49. Additional support may be forthcoming from the Local Authority but whatever that support entails it is unlikely to come anywhere close to making up for the absence of the RP.”

### **Submissions**

43. Ms Lindfield submitted that this evidence showed the family would suffer exceptional hardship if the Appellant were extradited, that there would in particular be a risk of harm to the children, and hence that extradition would violate Article 8. She said that it was clear that if the position before the district judge had been as it is now (and especially with the addition of Ms James’ report), then he would plainly have discharged the Appellant.
44. On the other hand, Mr Hoskins submitted that a fair reading of the most recent and objective evidence in the form of the s 7 report, whilst it demonstrates a detrimental impact on the family, it falls short of demonstrating that this would be exceptionally severe. Indeed, the withdrawal of social services intervention through the child protection plan at a time they are aware of the ongoing extradition proceedings may be seen as significant.

### **Legal principles**

45. These were not materially in dispute.



### *The test on appeal*

46. Although, in general, the question for an appeal court in an extradition case is whether the decision of the district judge was wrong (see eg, *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551, [19]-[25] and *Love v Government of the United States of America* [2018] 1 WLR 2889, [25]-[26]), in a case where fresh evidence not before the district judge is relied upon on an appeal, then the appellate court must make its own assessment based on all of the material: *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26], where Burnett LJ (as he then was) said:

‘26. In *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551 this court indicated that a District Judge should identify the factors pulling each way in an article 8 case and state the conclusion. An appellate court would interfere only if the conclusion was wrong. The judge in this case had very little information before him about the appellant's circumstances because of the way in which the hearing had to proceed in her absence. As a result, it is common ground that the limited role of the appellate court identified in the *Celinski* case needs modification in this appeal. We must make our own assessment.”

47. See also *Versluis v The Public Prosecutor's Office in Zwolle-Lelystad, The Netherlands*, [2019] EWHC 764 (Admin), [79].

### *The Article 8 test*

48. Article 8 guarantees the right to a private and family life. If extradition will result in a disproportionate interference with that right then it is barred by s 21/21A of the EA 2003.
49. The test under Article 8 was summarised by Baroness Hale in *H(H) v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338, [8]:

“8. We can, therefore, draw the following conclusions from *Norris*: (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 extradite 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."

50. Also of note are the passages in *H(H)* addressing the Article 8 rights of children in extradition cases: see in particular Baroness Hale at [9-15], [24-25], [33-34], [44-48], [67-79], [82-86]; Lord Mance at [98-101]; Lord Judge at [113-117] and [123-132]; Lord Kerr at [144-146]; and Lord Wilson at [153-156] and [170]. The interests of children in such cases are 'a primary consideration but not *the* primary consideration, still less *the* paramount consideration.'

## Discussion

51. As I have said, I am prepared to admit the report of Ms James, which in my judgment satisfies the criteria in *Szombathely City Court v Fenyveresi* [2009] 4 All ER 324.
52. I recognise the Appellant is a fugitive and that he left Poland when he should not have done. I also recognise the weighty public interest in extradition.
53. On the other hand, that weight is significantly less in this case because the only offending for which the Appellant is now sought is fairly minor and low-level dishonesty.
54. Making my own assessment, I have reached the clear conclusion that this is a case where extradition would cause exceptionally severe hardship to the Appellant's family, and A in particular, for all of the reasons set out in the evidence which I have quoted at length, and in light of the principles in *H(H)*.
55. I would fasten in particular on the conclusion of Ms Ashley in [113] of her report about the risk of harm to the children if the Appellant is extradited and his partner were left to cope alone. That outweighs the factors in favour of extradition.
56. I also take into account the delay in these extradition proceedings. It represents a very significant proportion of the Appellant's children's lives, given their young ages.
57. I am confirmed in this conclusion by the view expressed by District Judge Blake that he would likely have discharged the Appellant had the only offences been the minor ones in EAW 1, and that the Appellant was discharged by District Judge Ezzat in 2021 on Article 8 grounds.

## Conclusion

58. This appeal is allowed and the order for the Appellant's extradition made by District Judge Blake on 1 March 2019 is quashed and the Appellant is discharged.