AC-2023-LON-000294

[2025] EWHC 282 (Admin)

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

IN THE MATTER OF THE EXTRADITION ACT 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

14 February 2025

Before :

MR JUSTICE GRIFFITHS

- -

Between :

KRZYSZTOF LUKASIK **Appellant**

- and -

CIRCUIT COURT, PRAGA IN WARSAW
(A POLISH JUDICIAL AUTHORITY) **Respondent**

- -
- -

David Ball (instructed by Hodge Jones & Allen, solicitors) for the Appellant
Siân Beaven (instructed by the Crown Prosecution Service) for the Respondent

Hearing date: 16 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 14 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Griffiths:

1. This is an appeal against an extradition order made by District Judge (Magistrates Courts) King in the Westminster Magistrates Court on 23 March 2023. The sole remaining ground of appeal is that extradition is not compatible with the Article 8 rights of the appellant and his 16 year old son "S".

The offences, the sentence and the Warrant

2. Extradition was sought by the respondent judicial authority pursuant to a warrant ("the Warrant") issued on 21 February 2022 and certified by the National Crime Agency on 16 October 2022. It is a conviction Warrant. It is based on an enforceable judgment of the Regional Court in Warsaw on 23 June 2020 sentencing the appellant to a cumulative term of 2 years 3 months' imprisonment, all of which remains to be served. The appellant is on bail.

3. The Warrant and the total sentence of 2 years 3 months are in respect of the following five offences:

    i) Supply of marijuana on two occasions in 2014. The Warrant states that "Between 1 January 2014 and 21 March 2014 in Borowa Gora Gmina Serock Mazowieckie Voviodeship, acting against the law and in order to obtain financial benefit [the appellant] twice provided Ernest Burakowski with marijuana." The weights in question were 1 gram for the amount of 40 Polish Zloty (about £8 at current exchange rates) and 1.884 grams for the amount of 75 Polish Zloty (about £15).

    ii) Possession of marijuana in 2014. The Warrant states that "On 23 March 2014 in Borowa Gora Gmina Serock Mazowieckie Voviodeship acting against the law he had narcotic drugs in the form of marijuana." The weight in question was net weight 4.37 grams and gross weight 0.42 grams. It is not clear why the net weight exceeds the gross weight, but nothing turns on that.

    iii) Driving while disqualified on two occasions in 2016 and one occasion in 2019. The Warrant states these three offences as follows:

        a) "On 17 June 2016 in Ludwino Zegrzynskie Gmina Serock, Mazowieckie Volvodeship he drove an Opel motor vehicle in land traffic violating the decision of the Legionowo Starost revoking his licence."

        b) "On 6 September 2016 in Marynino, Gmina Serock, Mazowieckie Voivodeship he drove an Opel motor vehicle in land traffic violating the decision of the Legionowo Starost revoking his licence."

        c) "On 25 January 2019 in Zegrze, Officerska Street, Gmina Serok Mazowieckie Voivodeship he drove an Opel motor vehicle in land traffic violating the decision of the Legionowo Starost revoking his licence."

4. The time between the earliest offending in 2014 and the cumulative sentence of 2 years 3 months passed in 2020 is accounted for as follows. The appellant was summoned for the drugs offences in 2014 and given a sentence for them which became final in 2015.

The sentences for the three driving offences became final in 2019. He then applied through his lawyers for all the sentences to be re-cast as a single cumulative sentence. This application was made by his lawyer on 7 October 2019. The cumulative sentence was then passed on 23 June 2020. The appellant came to the UK in June 2019 and the District Judge made a finding (not challenged) that he did so as a fugitive.

The evidence

5. The judge heard evidence from the appellant (then aged 36) and from his partner Ms Chwiej. He had an expert psychologist's report from Dr Jessica Crumpton who was not required to give evidence (it followed that there was no real challenge to her report). He also had some medical notes.

6. Dr Crumpton conducted a psychological assessment to consider the likely impact of separation on S if the appellant were extradited (para 3.1 of her Report). She based it on a full review of the witness statements placed before the District Judge, and also (i) a clinical interview and assessment of S on 6 February 2023 and (ii) a clinical interview and assessment of the appellant on 6 and 7 February 2023 and (iii) psychometric assessments using tools which she explained in her report.

7. Her report contained an expert's declaration and had the appearance of being thorough and well-balanced. Her expertise was also considerable, as stated in an Annex to her report.

8. Dr Crumpton's report was supported by a full narrative and explanation of the information upon which it was based, including both the facts placed before her during the clinical interviews and the results of the assessment tests and their significance. S told her that he had suicidal thoughts from an early age and attempted suicide when he was 13, 14 and 15 (paras 6.59 – 6.60).

9. Dr Crumpton's report concluded that the appellant is S's "key and main caregiver and serves as a protective factor" (para 7.2). She noted that S has suffered with mental health difficulties throughout his childhood, which S attributed to an earlier separation from his father, until S was 16, when he came to join his father in the UK of his own accord, (para 6.53) and alleged physical abuse by his stepfather (para 7.3, para 6.48). In the event of the appellant's extradition, S "would likely suffer severe if not devastating harm" (para 7.4). This was underpinned by a detailed expert analysis, which included consideration of attachment theory (paras 7.5-7.7), the effect of parental incarceration on children (paras 7.8 – 7.10), and research on fathers (paras 7.11-7.12). Dr Crumpton then provided the following clinical assessment:

> "7.14 Based on my assessment, I am of the opinion that [S] will suffer from emotional wellbeing difficulties of a severe intensity at least, and most likely a devastating intensity in the event of his father's extradition. This view is formed on the basis that [S] is a vulnerable young person who has reported to experience significant difficulties with his mental health which has impacted his engagement in education, his behaviour and his relationships. Furthermore, [S] appears to have a limited support network in the UK or Poland and he reports that his father is the main source of support for him and has a served a protective factor to the

> difficulties he has experienced. (…) I am of the opinion that should [S] be separated from his father due to extradition; this will be experienced as a major and traumatic loss for him and would further exacerbate [S]'s vulnerabilities. Research and my clinical experience indicate that it is likely such a loss will cause significant harm to [S], both in the short and long term and will exacerbate [S]'s mental health difficulties.
>
> 7.15 Research in the field of developmental psychopathology has highlighted that risk factors have cumulative effects on child development. In [S]'s case, the alleged physical abuse he was subjected to by his stepfather over a number of years and the absence of his father in his life, would make the separation from his father, due to extradition, even more damaging (Evans, Li & Whipple, 2013). (…)
>
> 7.17 (…) I am of the opinion, that should [S] leave the UK and travel to Poland whilst his father faced a sentence, [S] would experience the harm reported in points 7.4 to 7.15."

The decision of the judge in Westminster Magistrates Court

10. In his decision, the District Judge referred to *Norris v USA* [2010] UKSC 9; *H(H) v Italy* [2012] UKSC 25; and *Celinski* [2015] EWHC 1274 (Admin).

11. He noted the submissions of the parties. These included submissions on behalf of the appellant that the drugs offences could not be described as seriously criminal (because of the amounts in question) and nor could the driving offences. Submissions in relation to the impact or potential impact of extradition on the appellant, and his son, and others were also recorded, including the opinions in Dr Crumpton's report.

12. The judge then turned to his own analysis and decision.

13. The judge did not conduct a *Celinski* balancing exercise with the structure suggested by *Celinski* at paras 15-17, which envisages a list of the factors favouring extradition, followed by a list of the factors militating against expedition, followed, finally, by the judge's conclusion as the rest of balancing those factors, with reasoning to support that conclusion. As was said in *Celinski* at paras 15-17:

> "15 As we have indicated, it is important in our view that judges hearing cases where reliance is placed on article 8 adopt an approach which clearly sets out an analysis of the facts as found and contains in succinct and clear terms adequate reasoning for the conclusion arrived at by balancing the necessary considerations.
>
> 16 The approach should be one where the judge, after finding the facts, ordinarily sets out each of the "pros" and "cons" in what has aptly been described as a "balance sheet" in some of the cases concerning issues of article 8 which have arisen in the context of care order or adoption: see the cases cited at paras 30-

> 44 of *In re B-S (Children) (Adoption Order: Leave to Oppose)* [2014] 1 WLR 563. The judge should then, having set out the "pros" and "cons" in the "balance sheet" approach, set out his reasoned conclusions as to why extradition should be ordered or the defendant discharged.
>
> 17 We would therefore hope that the judge would list the factors that favoured extradition and then the factors that militated against extradition. The judge would then, on the basis of the identification of the relevant factors, set out his/her conclusion as the result of balancing those factors with reasoning to support that conclusion. As appeals in these cases are, for the reasons we shall examine, common, such an approach is of the greatest assistance to an appellate court."

14. This is the format usually followed by judges deciding extradition cases, as recommended in *Celinski* para 17.

15. Instead, the judge in this case considered each point separately, without making very clear findings about them. In each case, also, he said that the point in question did not, in effect, tip the balance against extradition, instead of deferring his assessment about the balance until he had marshalled all the points (for and against) together. Had he adopted the balance sheet approach in *Celinski* he would have been able to avoid the potential pitfalls of this approach. He could have conducted a single balancing exercise which took account of the effect of all the points taken together, both for and against extradition, rather than picking them off one by one as he did. He did, however, conclude by referring to his decision on the basis of the factors "individually or cumulatively" (para 46).

16. The District Judge referred to minimal evidence of suicidal ideation on the part of the appellant himself (para 34) and said "I do not consider that this factor is significant enough to amount to the type of persuasive evidence that would outweigh the weighty public interest in extradition" (para 34). It is evident from the appellant's witness statement and from Dr Crumpton's report that he was not claiming any recent suicidal ideation or that he was or might become suicidal if extradited. Therefore the judge's conclusion on this point cannot be faulted.

17. He also referred to the impact of the appellant no longer being in a position to support his partner and her three children or his ex-partner (to whom he paid maintenance) if he were extradited, and noted that this was not untypical in cases of imprisonment or extradition, and would be mitigated by state benefits (para 35). He said that the cessation of the appellant's financial contribution "may cause some financial pressure, but this is not significant enough to amount to a factor that prevents extradition being ordered" (para 35). Again, this appears to be a conclusion that was open to him on the evidence.

18. He then turned to the impact on S (paras 36-44). He did not, apparently, accept Dr Crumpton's conclusions. Some of his discussion of Dr Crumpton's report is speculative and his speculations were not followed by any clear indication of what he concluded, by way of findings of fact or of evaluation, as a result of them.

19. In para 36, he noted that S (a 16 year old boy) was interviewed in the presence of his father and looked to him when answering some questions. He noted that Dr Crumpton

> "…does not provide a view on whether such behaviour is an indication of coaching for the assessment or whether it could simply have been [D] looking for comfort from his father but it does not have the status of an assessment conducted in the absence of a person who could consciously or subconsciously affect the way the subject presents to the expert and affect the answers provided."

The District Judge does not reach his own conclusion on this one way or the other and, in those circumstances, it was perhaps irrelevant for him to express the thought. I also doubt whether it would have been proper for him to reach the adverse conclusion about "coaching" that he hints at, or that this circumstance could have affected the reliability of the answers provided, when this was not a point put to Dr Crumpton (who was not required to give evidence), or in cross examination to the appellant, and there was no basis for it in Dr Crumpton's report.

20. The District Judge also expressed concern that S did not present for a second assessment, the first assessment having been brought to an end as a result of S's distress (para 36). He noted the explanation that S was attending school "which is of course important", but said that this was "puzzling given the importance of the assessment" (para 36). Again, it is not clear what the point of this observation is. If the District Judge was hinting that there was in his opinion some sort of cover-up involved in the non-attendance, he ought to have said so. But it does not seem that there was any sufficient evidential basis for such a conclusion. It was not, for example, a point which emerged from any cross examination of the appellant. Dr Crumpton felt able to express the opinion she did on the material she had, and there was quite a lot of it. Her opinion was not challenged, because she was not required to attend and give evidence.

21. The District Judge then said this (at para 37):

> "With respect to Dr Crumpton's expertise, it is difficult for me to understand how the conclusion that D *'will likely suffer severe if not devastating harm'* has been arrived at given the limitation of the assessment (one session seemingly brought to a premature conclusion and thereafter reliance upon the information provided by Mr Lukasik.) D described an unhappy domestic situation when he lived with his mother and her partner in Poland, but it seems clear that if Mr Lukasik is extradited D will not be living with his mother and so the concerns and memories of living in that domestic set up cannot be particularly relevant to what may occur if Mr Lukasik is extradited. It is clear from what D told Dr Crumpton that he and Mr Lukasik have a close relationship as father and son. That is not unusual and certainly not unique to a great many people facing imprisonment and/or extradition. A strong loving relationship and close bond between D and Mr Lukasik is not a sufficient ground not to order extradition. D expressed worry about the extradition hearing (and presumably the fact that Mr Lukasik could be extradited) and a determination

> to return to Poland himself if extradition was ordered, but given his age that itself is not a significant factor, particularly as he has lived for most of his life in Poland."

22. Notwithstanding the opening words of this passage, I do not think this sufficiently respected Dr Crumpton's expertise. Dr Crumpton made it very clear what the basis for her conclusion was. She set out the facts, and the assessments, upon which it was based, and she was also entitled to respect for her expert clinical judgment. Dr Crumpton did not consider herself unable to reach the conclusions she did on the basis of one session with S (and two sessions with the appellant) and the District Judge does not present any good reason to doubt her judgment in that respect.

23. The remainder of para 37 of the judgment said that the close relationship between the appellant and S was "not unusual and certainly not unique" but, whereas Dr Crumpton's unchallenged report was based on S as an individual, and his specific history, and her clinical assessment of him, the District Judge was talking about relationships between fathers and sons in general. In particular, he did not at this stage mention the actual attempts at suicide which S referred to having made at the ages of 13, 14 and 15 (he was now 16). Attempts at suicide are unusual. Although those attempts were made when S was living with his mother and step-father, Dr Crumpton's report made the point (not acknowledged by the District Judge) that the impact on S was cumulative, and so the additional impact of the loss of his father to extradition could not be taken in isolation and without considering, also, the history before he had started living with his father.

24. The District Judge did consider the suicide attempts much later in the judgment, at para 43, but he then discounted its significance as "unclear" and again did not apparently take on board the point about cumulative impact. Instead, he played down the suicide attempts on the basis that S would not be going back to his mother and stepfather. He then said (in the final sentence of para 43):

> "There is no significant or conclusive evidence that the extradition of [the appellant] will cause similar feelings in [S] to those he reports having previously experienced."

25. Dr Crumpton's unchallenged evidence was that S would likely suffer severe if not devastating harm (para 37) and this was discounted by the District Judge. This was a very significant conclusion and the judge's basis for discounting it was not strong. In particular, the judgment did not fully appreciate or take account of all the materials which she had presented in support of it, of which S's exceptionally fragile mental health was a part.

26. The District Judge also discounted Dr Crumpton's clinical finding, based on assessment tools, and scores, that S was within the clinical range for depression, obsession and compulsions and panic disorder on the Revised Children's Anxiety and Depression Scale (Report para 6.71). The report said that the results for Generalised Anxiety were "Normal range". It said that the results for separation anxiety and for social phobia were "Borderline clinical range". But it did say that the results for Panic disorder, and for Obsessions/compulsions and for Depression were "Clinical range". The District Judge's comment on this (in para 38 of his judgment) was:

> "…no further information or discussion is given for the reader to be able to assess the significance of that finding or measure against the number of other people assessed to have a similar finding. There is no information about how the conclusion that D is in the clinical range for those matters could be addressed. There is nothing to assist me in determining whether such a finding could be said to place D in an exceptional category or whether such a finding is not unusual for a 16 year old whose father is facing extradition. The RCADS assessment is not something that has assisted me in determining the issues in this case."

27. I do not think it was correct for the District Judge to read the report in this way. It was clear from Dr Crumpton's report that some of the results were in a "Normal range" or at the borderline of the clinical range. Therefore, it was clear that results that were in the "Clinical range" were abnormal and clinically significant. They formed part of the underpinning of Dr Crumpton's conclusions about S and, specifically, about the impact on S were his father to be extradited. It was not really open to the District Judge to say that these results did not assist him. They supported the finding of Dr Crumpton, and contradicted the District Judge's suggestion (in para 37 of his judgment) that it was difficult for him to understand how her conclusion that S "will likely suffer severe if not devastating harm" had been arrived at.

28. The judgment then said (at para 39):

> "Dr Crumpton's assessment that [the appellant's] extradition would lead S to suffer severe if not devastating harm is based on her reference to attachment theory (para 7.6)"

That was a misreading of Dr Crumpton's report. She said in para 7.4 that her assessment was "based on the information obtained from my assessment". That information was by no means confined to her explanation of attachment theory in para 7.6. It had been set out throughout her report. It included documentary evidence (para 4.1). It included the clinical interviews with S and with the appellant. It included S's results on the Revised Children's Anxiety and Depression Scale. It included points specific to the appellant and to S in paras 7.2 and 7.3 of the report. It included the other research findings discussed under the headings "The effect of parental incarceration on children" and "Research on fathers" in paras 7.8 – 7.12 of the report. It included specific reasoning, not at all limited to attachment theory, in paras 7.13 – 7.17 of the report, some of which I have already quoted, which was, again, specific to the appellant and to S, and not referable to any child of any person extradited. That makes the District Judge's dismissal of the references to attachment theory, and to the conclusion of the expert clinical psychologist, unsound. This weakens the conclusion in para 39 of the judgment that "there is nothing to show why the effect on [S] in this case would be exceptional, compared to the effect on other children in a similar situation".

29. The judgment says that "Dr Crumpton's report is silent on the significance of [S]'s age" (para 41). It speculates that the research applied by Dr Crumpton "may therefore cover an age range from just above toddler to a child just short of their eighteenth birthday". It says that "Without greater specificity", the District Judge was "not persuaded that the reference to attachment theory and the consequences of enforced separation that would

be a consequence of extradition assists me in determining the matter". Those references were only part of the underpinning of the report, and it was not a secure basis for dismissing even those references, that the District Judge doubted (as it seems) the expert's ability to understand research in her own field. She knew S's age and she was applying the research to him. She had a Doctorate in Clinical Psychology and she was a Chartered Clinical Psychologist specialising in working with children (Appendix 1 of her report). She also had a First Class honours BSc degree in psychology.

30. The judgment referred to conducting "the balancing exercise in relation to the competing arguments about Article 8" (para 44). However, I cannot see in the judgment a list of the factors weighing in the balance in favour of extradition, except in a passage (in para 29 of the judgment) which is rehearsing submissions made on behalf of the Judicial Authority. The analysis in the judgment (in paras 31-46) is not a dispassionate identification and weighing of factors for and against, as required by *Celinski*. It is a sustained argument in favour of extradition, which justifies extradition in more or less every paragraph.

31. This can be seen in the paragraph dealing with the seriousness or otherwise of the offences in question (para 45). It says:

> "Whilst it may be the case that there are more serious criminal offences upon which extradition requests are based, the offending in this case is not so trivial as to be a persuasive factor in the balance against extradition."

32. The Judicial Authority had itself acknowledged that the offending was "not the most serious in the criminal calendar" (para 29 of the judgment). This was a factor against extradition and it would have been helpful to have adopted the balance sheet approach which would have identified it as such. Instead, this passage of the judgment conflates that point with the evaluation point that it did not tip the scale (saying that it was not so trivial as to be a persuasive factor).

33. The District Judge noted a submission that the appellant is "heavily convicted in Poland" (para 29). This was based, not only on the five offences specified in the Warrant as the basis of the sentence, but also on two or three other offences in an international conviction certificate before the court. The first of these was illicit consumption of drugs, and their acquisition or production for his own use, in October 2013 (when he was 27), for which he received a sentence of 6 months suspended for 2 years with a supervision order. The next was an offence against the Inland Fishery Act in October 2014, for which he received a sentence of 3 months suspended for 2 years. There was also an offence of driving while disqualified in 2017 which appears not to have been included in the offending specified in the Warrant.

34. The District Judge noted (from Dr Crumpton's report) that S wanted to return to Poland if his father were to be extradited. The judge decided that, if he did so, he had viable living arrangements with his grandfather, with whom he had lived before (para 42), relatively recently (para 44). He said (at para 40):

> "In that regard the paternal grandfather's caring responsibilities for his 95 year old other would not seem to be an insurmountable obstacle to [S] living with him. The reality is that [S] is 16 and

> able to meet his own basic needs. He has a significant degree of independence and personal autonomy. This is not the same as a toddler or even a child under 12 being placed with an elderly grandparent. [S] appears relatively self-sufficient, having taken the decision to leave Poland when he turned 16 and I am satisfied living with paternal grandfather is a viable option."

35. The District Judge also concluded that, as an alternative, S could remain in the UK and live with his father's partner, Ms Chwiej, who was willing for him to continue to live in that household even if his father was forced to leave by extradition (para 42). Ms Chwiej, however, has her own health issues and, in view of recent developments in that respect, of which I have been informed, the respondent conceded that living with her is not a realistic option. The District Judge did not suggest that S could live with his own mother, given the unhappy history of his past residence with her and her new partner (para 37).

The appeal

36. There is no fresh evidence before me and no challenge to the judge's primary findings of fact. The appeal is raised under section 27(3) of the Extradition Act 2003, on the basis that, although no new issue or evidence is relied upon, the judge ought to have decided the Article 8 issue differently and not ordered extradition, because of the effect on S.

37. It is argued, in short, that the decision of the District Judge was wrong. The focus is on the outcome (*Celinski* para 24; following a discussion and review of the authorities in paras 19-24). As Lord Thomas of Cwmgiedd LCJ said in *Celinski* at para 24:

> "The single question therefore for the appellate court is whether or not the district judge made the wrong decision. It is only if the court concludes that the decision was wrong, applying what Lord Neuberger PSC said, as set out above, that the appeal can be allowed. Findings of fact, especially if evidence has been heard, must ordinarily be respected. In answering the question whether the district judge, in the light of those findings of fact, was wrong to decide that extradition was or was not proportionate, the focus must be on the outcome, that is on the decision itself. Although the district judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong."

38. Per Lord Burnett of Maldon LCJ and Ouseley J in *Love v USA* [2018] 1 WLR 2889; [2018] EWHC 172 (Admin) at para 26:

> "The appellate court is entitled to stand back and say that a 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."

39. The appellant argues that the length of the sentence (which was significant) fell to be assessed in conjunction with a recognition that the offending was not as serious as in some other cases, citing *Koc v Turkey* [2021] EWHC 1234 (Admin) at para 25 and *Giedrojc v Poland* [2023] EWHC 863 (Admin) at paras 21-22. He argues that the judge failed to remind himself that, as Baroness Hale put it in *H(H) v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338; [2012] UKSC 25 at para 15:

> "…in considering article 8 in any case in which the rights of a child are involved, the best interests of the child must be a primary consideration. They may be outweighed by countervailing factors, but they are of primary importance."

That is, indeed, an important point.

40. The appellant argues that the District Judge undervalued and misunderstood the weight to be attached to Dr Crumpton's report and conclusion about the impact of extradition on S. The appellant argues that the District Judge was wrong to find that S's welfare needs could be adequately cared for if he was extradited. His grandfather could not be expected to cope with his suicidal ideation. He could not go to his natural mother. His father's partner in England would suffer financial hardship if he stayed with her after his father had ceased to contribute financially (which was recognised in para 35 of the judgment).

41. The appellant argues that the District Judge struck the balance incorrectly and was wrong to order extradition.

Discussion and decision

42. I have identified two flaws in the exercise performed by the District Judge. First, he did not, either in form or substance, conduct a *Celinski* balancing exercise. Instead, he presented a sustained argument in favour of extradition without standing back and looking at the "pros" and "cons" in the round before making his assessment. Second, he did not properly evaluate Dr Crumpton's report and did not give appropriate weight to her reasoned, expert and unchallenged opinion that S would suffer from emotional wellbeing difficulties of a severe intensity at least, and most likely a devastating intensity, in the event of his father's extradition.

43. This makes it appropriate for me to conduct a *Celinski* balancing exercise myself, in order to see if the order for extradition was wrong in this case: *Ciemniak v Poland* [2019] EWHC 1340 (Admin) at para 37; *De Zorzi v France* [2019] 1 WLR 6249, [2019] EWHC 2062 (Admin) at para 66; *Gorak v Poland* [2022] EWHC 671 (Admin) at para 26; and *Klos v Poland* [2024] EWHC 2622 (Admin) at para 69. It is common ground that, since I am conducting the exercise afresh, I should do so on the basis of the facts now, which include the fact that S has now passed his eighteenth birthday.

44. Like the District Judge, I am guided by the principles established in *Norris v USA* [2010] UKSC 9; *H(H) v Italy* [2012] UKSC 25; and *Celinski* [2015] EWHC 1274 (Admin). Those principles are too extensive and too well-known for it to be necessary or convenient for me to repeat them here.

45. The factors in favour of extradition are:

i) The very high public interest in ensuring that extradition arrangements are honoured (*Celinski* para 9).

ii) The appellant's status as a fugitive from justice and the public interest in discouraging a perception that the UK is a safe haven for such people (*Celinski* para 9).

iii) The proper degree of mutual confidence and respect to be accorded to the decisions of the judicial authority (*Celinski* para 10).

iv) The independence of prosecutorial decisions, these not being matters for this court, which is to be borne in mind when considering issues under Article 8 (*Celinski* para 11).

v) This being a conviction warrant, recognition that sentencing is a matter for the overseas court and their sentencing régime and assessment is not to be second-guessed by this court (*Celinski* para 13).

vi) The substantial sentence passed on the appellant (two years and three months' imprisonment), none of which has been served.

vii) The multiple offending in the five offences upon which the Warrant is based, covering a period from 2014-19. The appellant also had previous convictions in Poland, although he has none since his arrival in the UK as a fugitive.

viii) The appellant's family life in the UK being built on precarious foundations, because he arrived as a fugitive. His son S came from Poland to live with him only in August 2022, which was after the issue of the Warrant and only 6 months before the final hearing before the District Judge on 9 February 2023.

46. The factors against extradition are:

i) Dr Crumpton's opinion that S would suffer from "emotional wellbeing difficulties of a severe intensity at least, and most likely a devastating intensity", in the event of his father's extradition.

ii) It is conceded on behalf of the Judicial Authority that the crimes reflected in the Warrant are not the most serious (judgment para 29(iii)).

iii) The appellant provides financially for his partner and household in the UK, including S, and pays maintenance for a daughter in Poland. This will cease if he is extradited to serve his sentence. However, the District Judge identified support available to his partner from the benefits system (judgment para 35).

iv) The appellant has his own mental health issues. However, there is no evidence that these could not be successfully managed in Poland and they were not, at the date of the hearing, very significant (judgment para 34).

v) The appellant is concerned about whether he could return to the UK after serving his sentence. However, there was no evidence to support this as a weighty consideration, bearing in mind the authorities considered by Chamberlain J in *Merticariu v Romania* [2022] EWHC 1507 (Admin) at paras 50-57.

47. The weightiest of these factors is the impact of extradition on S, particularly bearing in mind the dictum of Baroness Hale in *HH* which I have quoted. However, I see no reason not to accept the District Judge's conclusion that S could, and most likely would, in the event of his father's extradition, go back to Poland (in accordance with his own expressed intention), where he could live with his grandfather. He lived with his grandfather in Poland for three years after the appellant left for England in 2019, and, now that he is 18 years old, he would be even less dependent on his grandfather than he was then, which counterbalances the fact that his grandfather has caring responsibilities for his own 95-year old mother. His relationship with his father will, no doubt, continue while his father is in prison, and afterwards. He is not of such a young age that the relationship is at a critical formative stage. Indeed, S is now an adult, albeit a young adult. He had only been living with his father in the UK for a very short time at the time of the hearing before the District Judge. Dr Crumpton referred to his earlier suicidal attempts but did not suggest a suicide risk now, or in the future, or that such a risk could not be as well managed in Poland as it might be in the UK. These mitigating considerations reduce the weight even of the impact on S as a factor against extradition.

48. Whilst the offences in the Warrant are less serious than they might be, which is a factor against extradition, that is counter-balanced by the length of the unserved sentence and the multiple offending reflected in the Warrant, which are factors in favour of extradition. It is striking that the sentence is a consolidated sentence, re-framed at the appellant's own request as recently as June 2020, not long before the Warrant was issued in February 2022. It may therefore be taken as an up-to-date assessment of the appellant's unpunished criminality as a whole.

49. I now have to balance these factors. After careful consideration, I have concluded that they tip decisively in favour of extradition. Extradition would not, in my judgment, be a disproportionate interference with the Article 8 rights of the appellant or his son. The factors in favour of extradition, which I have identified, do outweigh the factors against it. Consequently, the decision of the District Judge was not wrong. My own decision, even considering the matter afresh, is also that an order for extradition should be made.

50. The appeal is, therefore, dismissed.