IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 1342 (Admin)

No. CO/5895/2017

Royal Courts of Justice
Wednesday, 8th May 2019

Before:

MR JUSTICE HOLMAN

B E T W E E N:

M — Appellant

- and -

CIRCUIT COURT IN CZESTOCHOWA, POLAND — Respondent

ANONYMISATION APPLIES

MR M. HAWKES appeared on behalf of the appellant.

MS A. BOSTOCK (instructed by the Crown Prosecution Service Extradition Unit) appeared on behalf of the respondent.

J U D G M E N T

(As approved by the judge)

MR JUSTICE HOLMAN:

1 This is a statutory appeal pursuant to section 26 of the Extradition Act 2003 from an order for extradition made in the Westminster Magistrates' Court by District Judge Goozee as relatively long ago as 18 December 2017.

2 Section 27 of the Extradition Act 2003 provides as follows:

> "(1) On an appeal under section 26 the High Court may—
>
> (a)allow the appeal;
>
> (b)dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> (3) The conditions are that—
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
>
> (4) The conditions are that—
>
> (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
>
> (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
>
> (c) if he had decided the question in that way, he would have been required to order the person's discharge.
>
> (5) If the court allows the appeal it must—
>
> (a) order the person's discharge;

(b) quash the order for his extradition."

3 Despite the valiant submissions today of Mr Malcolm Hawkes, on behalf of the appellant, to the effect that there are a number of errors in the judgment of District Judge Goozee, in my view this case and this appeal now falls squarely within the territory of section 27(4) and not, frankly, that of section 27(3).

4 The essential factual background and context of this appeal is somewhat complicated, but in essence is as follows. The appellant is a Polish woman who was brought up in Poland and lived there until relatively recently. She is now aged just 37. In about 2002, while still living in Poland, she began a long-term relationship with a man who was initially for many years her partner, but is now her husband. As well as being in a personal relationship with him, she worked in certain businesses that he owned or ran in Poland.

5 The European Arrest Warrant, pursuant to which the order for extradition was made, alleges high value VAT frauds in a period between June 2012 and May 2014. These are said to have been a form of carousel fraud between at least three countries, namely, Poland, Britain and the Czech Republic. There appear now to be 14 or even 15 co-accused altogether, and the total sum involved is said to be of the order of the equivalent of £11 million. It was during the period of the alleged VAT frauds that the appellant gave birth to twins A and L on 7 October 2012. Those twins, who are the children of her partner (now husband), are now aged about six and a half. The appellant took time off during her pregnancy and in the first few months after the birth, but did then return to work part-time at her partner's business.

6 In 2014 the partner made a short visit to England where he was arrested for, and subsequently charged with, serious criminal offences, including blackmail, to which he later pleaded guilty. In May 2014 the appellant herself travelled to England to support her partner, bringing the two twins with her. Whilst here, and very regrettably indeed, she

herself committed the serious criminal offence of, in lay language, interfering with prospective witnesses in relation to the prosecution of her husband.

7 After her arrival in England, the appellant conceived a third child, R, of whom her partner is also the father, who was born in England on 13 July 2015. So R is now aged about three and three-quarters. In 2016 the appellant was tried and convicted and sentenced to imprisonment for the offence of interfering with the witnesses. During her period in prison, she was able to keep R with her in a mother and baby unit, but not the twins who were older. The twins were cared for in part by a young relative here and a nanny, and in part, for several months, by their paternal grandparents in Poland.

8 In August 2016 the appellant was released from prison. The Secretary of State for the Home Department made the decision to deport her to Poland in view of the serious criminal offence of which she had been convicted here. In April 2017 the appellant actually married her partner, to whom I will refer from now on as her husband. The appellant initially resisted the attempt of the Secretary of State for the Home Department to deport her and, indeed, lodged a notice of appeal; but there was then a development in that her husband agreed voluntarily to return to Poland in order to face trial there upon the alleged VAT fraud, and arrangements were made for him to be transferred in custody to Poland. In the light of that development, the appellant informed the Home Office on 24 May 2017 that she herself would agree to her own deportation so that she and their children were all back in Poland together, as well as her husband.

9 It is important to stress that when the appellant made that decision and informed the Home Office that she agreed to being deported, she was not aware that a European Arrest Warrant for her own arrest had already been issued. In fact, that warrant had been issued on 1 March 2017 and was certified by the National Crime Agency on 31 May 2017. That in turn resulted in the appellant being arrested on 20 June 2017, and the extradition

proceedings here got underway. In August 2017 the appellant's husband actually returned to Poland, but she has remained here with the three children. As I have said, the extradition proceedings concluded on 18 December 2017 with the decision of District Judge Goozee.

10 The judgment of the district judge is relatively lengthy and, in my view, both detailed and thorough. It sets out the whole history at some length, and it correctly summarises the law and correctly and appropriately conducts a balancing exercise based on the well-known authority of *Celinski*. Despite the valiant submissions of Mr Hawkes, it seems to me that there is only one error of any significance in that judgment. I do not say that that error is such that the conditions under section 27(3) of the Extradition Act 2003 are satisfied, but it undoubtedly has a knock-on effect on my consideration under section 27(4).

11 There was considerable focus during the extradition hearing upon the position of the three children, and the district judge, appropriately, gave very considerable consideration to their position. He had heard evidence from a psychologist, Dr Aslan, which he summarised at paragraph 15 of his judgment. It includes the following:

> "[Dr Aslan] was asked his opinion with regard to the proposals that the children could be cared for by the paternal grandparents in Poland. His opinion was that this arrangement would minimise the detrimental effect upon the children. It would be a better managed arrangement but in his opinion the consequences for the children would be the same. He noted that last time the twins were in their care, they could not cope and they brought them back to the UK. They did not have R at that point. He believed the children would still go through trauma. One of the twins, L, is exhibiting behavioural problems which is corroborated by the letter from the school. L has anxiety problems. He stated that the effect on the children of the requested person's extradition would be sadness, distress, aggression and anger. The effects would be worse for L as he did not observe any behavioural issues with A or R. R has a strong attachment to the requested person. He agreed the children were resilient and have adapted fairly well. His opinion was that if

> the requested person was extradited, maintaining contact while she was in custody would be important ..."

12 Then at paragraph 16 the district judge noted that:

> "In cross-examination, [Dr Aslan] agreed that the twins had been separated from the requested person when she was serving her prison sentence in the United Kingdom, they were resilient. However, further trauma caused by separation could be damaging ... He agreed it would be beneficial for R to be able to stay with his mother in prison until he was three as adjustment would be easier after that age. He conceded that his opinion upon the impact of the children was a prediction. He agreed a routine of care with paternal grandparents would minimise the risks of separation from the requested person ..."

13 The district judge quoted from the written report of Dr Aslan in which he had said:

> "The enormous attachment of the children to their mother means that they might be plummeted into what could be paralysing grief ... leading to multiple future problems."

14 However, in his oral evidence Dr Aslan had said that that "was the worst case scenario." At paragraph 38 of his judgment the district judge referred to the position of the paternal grandparents. He said halfway through that paragraph:

> "[The paternal grandparents] had confirmed that they would look after the children if their parents would be unable to do so and the children were at risk of being placed with foster carers. This confirmation to the local authority is despite the reservations expressed within their own statements. I find that the paternal grandparents are deemed suitable carers for the children in Poland following the local authority assessment, and despite their own reservations, they have agreed to that course of action with the local authority if the requested person is removed."

15 The district judge then continued:

> "I find that the local authority have satisfied themselves that this is the most appropriate away of ensuring the children's welfare is given paramount consideration and risk of serious harm as a result of separation from their mother as primary carer is reduced."

16 At paragraph 40 the district judge considered specifically the position of R. There was evidence that R could remain with his mother in prison in Poland until his third birthday, which would of course be in July 2018. He concluded that paragraph:

> "I find therefore there are arrangements for R to be placed with his mother in pre-trial detention and thereafter his continued care will be with his paternal grandparents and his siblings."

17 I mention that although the two twins had spent a period of time living with their paternal grandparents in Poland, as I have described, R has never done so. Indeed, so far as I am aware, R has never yet been separated from his mother. In accordance with what is apparently the culture in Poland, he is still breastfed by her.

18 At two places in his judgment the district judge refers to there having been "a full assessment" by the local authority of the grandparents. That appears first at paragraph 45(f) where the district judge was listing and considering "the factors supporting extradition", and again at paragraph 47 where he said:

> "I recognise the decision to extradite will expose the requested person's children to further distress, anxiety and emotional harm. However, the effect on the children is mitigated by the fact that following a full assessment by social services, the paternal grandparents have agreed to look after the children in Poland."

19 The district judge concluded that same paragraph by saying:

> "I am satisfied that with the arrangements and support available [viz. living with the paternal grandparents] separation from their mother will

> not cause long-term emotional harm and the children will regain stability, trust and security with their family."

20 The error of the district judge, with respect to him, is in his characterisation that the local authority had carried out "a full assessment" of the paternal grandparents or, frankly, any kind of assessment at all. The factual and evidential position appears to be as follows. There was a report dated 28 July 2017 by a social worker, Loretta Lathwood, who had visited the children with their mother and assessed their situation here, and had considered what alternative carers might be available: see paragraph 4 on internal page 12 of her report, now at bundle 1 page 93.

21 The father was not, and is not, available to care for the children as he was and remains in custody. The maternal grandparents were not and are not available. The appellant's late father is dead, and her mother is suffering from dementia. A maternal aunt was already committed to caring for the maternal grandmother. There is a maternal cousin (a niece of the appellant) who had spent some time caring for the children in England, but she had made plain (as she continues to make plain) that she is not available to care for the children again. This left only the paternal grandparents. The July report of Loretta Lathwood states as follows:

> "The paternal grandparents are described as elderly (at 62 and 64 years old) and are said to be unable to care for three young children."

22 So the position in that report was that the paternal grandparents had effectively been ruled out, and had certainly not been assessed as suitable to care for the children. There is a further short updating statement by Loretta Lathwood dated 30 October 2017, which is later than the date upon which this case was heard by the district judge, but before he gave his judgment. That states at paragraph 1, now at bundle 2 page 32:

> "2 August 2017 - Alicia Bielewicz - Polish social worker at Wandsworth Children's Services telephoned [the paternal grandparents] in Poland to

> ascertain their position on looking after their grandchildren.
> [The grandfather] confirmed that he is aware of the current situation that the children's parents were in and advised that he and his wife live in Poland and had looked after the children from February to April 2016. He said the children were distressed and cried a lot as they missed their parents. He confirmed that he and his wife would look after the children if their parents would be unable to do so, and if the children are at risk of being placed in foster care with strangers.
>
> The local authority feel this option is in the best interests of the children as being placed in foster care will cause further distress and the matter of contact with their birth family will become complicated and confusing for them. Also, if the local authority had to take the children into care it would mean that the local authority would want to complete an assessment of the paternal grandparents either in person or via Skype to ensure that the children would be looked after without any risk to them as the children would be accommodated under section 20 Children Act 1989."

23 That appears to be the sum total of the so-called "full assessment" that the local authority had in fact conducted into the position of the grandparents and their capacity to care for the children. It appears to have been based on a single telephone call and, in the second paragraph that I have just quoted, the local authority themselves in fact made plain that if the children went into their care they would want "to complete an assessment" of the paternal grandparents to ensure that they would be looked after without any risk to them. So, it was not put forward by the local authority themselves as "a full assessment" and is indeed clearly qualified in that way. It seems to me, therefore, that when the district judge placed so much reliance, as he did, on the availability and capacity of the paternal grandparents to care for the children, he was doing so on a very slender evidential basis that did not in fact support the conclusion that he reached.

24 If, however, the matter stood there I do not say that I would have considered that the conditions under section 27(3) of the Extradition Act 2003 were made out. It is the case that there was some evidence, albeit hearsay and based on a single telephone call, that the paternal grandparents were at least available and willing to care for the children. However, between then and now there have been significant changes. In the first place, there is the passage of time.

25 The appellant very promptly gave notice of appeal from the decision and order of the district judge. One limb of her proposed appeal was an argument, familiar to all who practise in this field, that there could not be extradition to Poland until resolution by the Divisional Court of the test case of *Lis and others*, which raised profound questions as to the independence of the Polish judiciary. As a result, this case, along with many other cases involving extradition to Poland, was stayed for many months until the outcome of *Lis* was known at the end of last October. The factual upshot is that the appellant and her three children have continued all living together here in England for another 16 or 17 months even since the decision of District Judge Goozee. R has now attained the age of three and there is no possibility of his being placed in a prison with his mother in Poland, as the district judge contemplated in paragraphs 40 and paragraph 45(f) of his judgment. The European Arrest Warrant is based upon an order for the immediate detention of the mother in Poland. It follows that if the extradition order stands and she is extradited, there would be immediate and abrupt enforced separation of R, who is still being breastfed by his mother, from his mother.

26 There are two further significant developments which run counter to findings by the district judge. In addition, the appellant has, with the leave of the court, obtained further psychological evidence to which I will later refer. The first significant development relates to the position of the paternal grandparents. By a letter dated 31 July 2018 they have now

firmly said that they are not willing or able to care for the children. The letter reads in translation:

> "I [the paternal grandmother] born on 2 January 1955 [viz. now being 64] ... here represent that due to my ill-health I am unable to provide my grandsons A, L and R with proper care and the loving environment they need with relation to the lengthy imprisonment of their father ... and the possible extradition and imprisonment of their mother ... despite our prior willingness to do so and the declaration made by my husband. I am suffering from depression; this condition makes it impossible for me to create an environment conducive to the children's wellbeing and proper development, which I deeply regret.
>
> I live in Poland together with my husband, who - due to severe back, muscular and joint pains - is also unable to do that. Both retired, we have now temporarily moved to the seaside with the aim of improving our health while the children, being of school age, need to reside at a permanent address, which we are unable to ensure. Moreover, the severe problems from which the twins suffer as a result of the traumas through which they have gone will be most likely aggravated by yet another painful separation from their mother. We are concerned that the youngest boy, R, will be equally devastated ...
>
> After careful consideration, neither myself nor my husband see any possibility for us to face up to the current difficulties and the future challenges which taking care of our grandchildren in this hardest period of their life would entail. Assuming such tremendous responsibility for them exceeds our capabilities."

27 That part of the letter is signed by the paternal grandmother. Under it the paternal grandfather has written:

> "I fully agree with my wife's statement. Due to our age and health problems, we are unable to take care of our grandsons."

28 I mention that I have omitted from the above quotation from the grandmother a sentence in which she makes reference to the fact that the children speak English and that verbal contact with them by the grandparents may be limited. That is unlikely to be well-founded, since the children's mother has confirmed in court today that she herself speaks to them in Polish, albeit that they generally reply to her in English.

29 In relation to this evidence, Ms Amanda Bostock, who has appeared with great cogency on behalf of the prosecutor, makes two submissions. First, she makes an overall submission that can be summed up as saying "they would say that, wouldn't they?" Second, she submits that this evidence is not in the form of a sworn statement or indeed a formal witness statement at all and is no more than a signed letter. So far as that point is concerned, the letter is, in my view, at least as weighty as, and indeed rather more weighty than, the hearsay evidence of the local authority in the updating report of 30 October 2017, which merely very briefly described a single telephone conversation with the grandparents. There is no reason to doubt that this letter is the authentic letter prepared and written by the grandparents, and signed by them. It pertains to their own grandchildren whom they love. It is a reasoned letter that goes into some detail as to why they cannot care for their grandchildren, and it seems to me that I should accept it.

30 So, as it seems to me, there is now a very significant change since District Judge Goozee dealt with this matter in late 2017, and, in relation to the willingness or capacity of the grandparents now in 2019 to care for these children, evidence is available that was not available, and indeed could not have been available, at the extradition hearing.

31 The second significant change relates to the state of readiness and likely future course of the criminal proceedings in Poland. At paragraph 43 of his judgment the district judge said:

> "The additional information from the judicial authority states that they are ready to proceed with a joint trial and the requested person's husband

> is already now in custody in Poland. There is no significant delay and no evidence that the requested person and her husband cannot receive a fair trial in Poland."

32 That position has now changed very significantly. Again, I do not say this as a matter of any criticism of the district judge, but, rather, as change since he parted from the case. The proceedings against this appellant in Poland have now apparently been severed from those against her husband and the 14 other co-defendants. There will not be a joint trial. Patently, the husband and the 14 other co-accused will be tried before this appellant is tried on her own in a severed trial.

33 Further, although the district judge said "there is no significant delay" there clearly has been delay and will continue to be significant delay. In the first place, we are already 16 or 17 months on since the decision and judgment of the district judge. Secondly, as recently as 29 March 2019, there was a decision of the criminal court in Poland presided over by Region Court Judge Poch. There is a very lengthy judgment in support of that decision, but the gist of it is that the Polish Criminal Court has referred the case back to the District Prosecutor's Office in order to perform specified additional required enquiries as part of the investigation. A long list of further enquiries is then set out with regard to the preparation of the case. I note from the last page of the decision of that court that they have expressed great concern about the size and complexity of this case and say:

> "The prosecution should consider a much more thorough selection of evidence, in particular with regards to evidence which the prosecution does not request for the court to consider directly during the trial. Compiling all of the evidence gathered so far into several dozen volumes of files and over 160 volumes of additional documents, without any selection and synthesis of this material in the indictment for the court, cannot be considered as the correct and exemplary way of concluding preliminary investigations ..."

34 The whole tenor of that decision is, bluntly, that this is a case the scale and complexity of which is currently out of control. It has been referred back to the prosecution. It seems unlikely that there will be any trial at all of the husband and the 14 co-accused for an appreciable period of time. It seems likely that that trial itself will take an appreciable period of time and, accordingly, it seems likely that there will be a long delay, certainly measured in many months and probably in some years, before any actual trial of this appellant takes place. So, the observation of the district judge in paragraph 43 of his judgment that "there is no significant delay" has, frankly, been falsified by subsequent events, or in some respects, lack of events.

35 A third development is that there has been further psychological evidence. When the renewed application for permission to appeal came before me last October, Mr Hawkes asked me to give permission for "an updating" report from Dr Aslan who had given evidence to the district judge. It seemed to me only right that after a delay, even by then of about a year, I should permit updating evidence in relation to young, damaged and very vulnerable children. In the event, Dr Aslan was not available, and so some other judge or official of the court gave permission for a further psychological report from a second psychologist, Dr Tom Grange.

36 His report is dated 10 December 2018. It is lengthy and thorough. It was based on a very considerable consideration of a large range of documents which he listed, as well as observations by him of the mother and all the three children. The report does go at considerable length into a description of attachment theory and the likely effect upon children generally of separations and, in particular, repeat or multiple separations from caring figures to whom they are attached. At half past four in the afternoon and in an ex tempore judgment I do not propose to quote at length from that report of Dr Grange, which is available for anybody with a proper interest in this matter to read. The overall effect and impact of it is, in fact, to be found in a single paragraph under the heading "Executive

Summary" at paragraph 3.02 on internal page 4 of the report, and now at bundle 4 tab 4 page 4. Dr Grange says:

> "Following the assessment, I am of the opinion that L and A will both likely suffer devastating harm with longer-term consequences, in the event of separation from their mother. I am also of the view that R would suffer severe harm. This opinion is formed on the basis that the three boys, especially the twins, have clearly suffered significant harm already caused by multiple previous separations. L is experiencing attachment difficulties with associated aggression and separation anxiety, and will almost certainly respond extremely badly to another separation, irrespective of the support or care arrangements that are put in place. A is showing signs of social anxiety and concentration problems, and will also respond very badly in response to [his mother's] extradition. Although R is developing relatively well at present, due to his age, he is particularly sensitive to separations from a primary carer, and I would expect R to experience severe harm at least, with enduring developmental consequences. These expected consequences would apply even if the event of a relatively short separation of a few months, especially for the twins."

37 So what is predicted there by this psychologist, who has thoroughly reviewed this case and met the mother and the children, is "devastating harm with longer-term consequences" to the two twins, and "severe harm" to R in the event even of a relatively short enforced separation from their mother. It may be said that this evidence is no more than a repeat and reemphasis of that which Dr Aslan had already given to the district judge. But the fact is that that is the current situation of these three children and the current expert evidence as to the likely effect upon them of any enforced separation from their mother if she is extradited to Poland and immediately detained there, as she will be pursuant to the existing Polish order upon which the European Arrest Warrant is founded.

38 Ms Bostock says, entirely speculatively, that I can rely upon the Polish court to urgently grant release on bail to the mother, but no steps, so far as I am aware, have ever been taken to pave the way for a grant of bail, and, certainly in the case of the husband and father, he has now been back in Poland since August 2017, now over 20 months. He remains in custody and, as I have explained, the date of his trial is not yet even in sight.

39 As I have said, the district judge very carefully performed the well-known *Celinski* balance at paragraph 45 and paragraph 46 of his judgment. I do not intend at now 4.45 p.m. to further lengthen this judgment by setting out those paragraphs in full, but I have them very firmly in mind. On the one hand, he identified as supporting extradition the public interest in ensuring that extradition arrangements are honoured; the seriousness of the offence in question, being a multimillion pound carousel fraud carrying potential imprisonment of up to 15 years; the relatively recent period of the offending; the fact that the requested person has only lived in the United Kingdom for a relatively short period of time, namely since April or May 2014; and at paragraph (f) the availability of the paternal grandparents to care for the children, who, as he asserted, had been fully assessed.

40 The factors that the district judge identified as militating against extradition are that the requested person has no convictions in Poland and is of good character there; the fact that these proceedings have taken a toll on her health; the fact that extradition will result in separation of the children from her, which "will have a major impact on children and will inevitably cause emotional harm ..."; and the fact that she had been (as she remains) willing voluntarily to engage with the Polish authorities, provided she has assurances of being able to continue to care for her children.

41 Having identified those factors on either side of the balance, the district judge said:

> "I have considered the above factors and concluded that the factors supporting extradition outweigh the factors mitigating against

> extradition. This is primarily based on the public interest and the seriousness of the alleged offences. I recognise the decision to extradite will expose the requested person's children to further distress, anxiety and emotional harm. However, the effect on the children is mitigated by the fact that following a full assessment by social services, the paternal grandparents have agreed to look after children in Poland ..."

42 The district judge concluded at paragraph 48:

> "I conclude in considering these factors that the combination of the strong public interest in this country complying with its international treaty obligations in respect of extradition and the constant and weighty public interest in extradition that those accused of crimes should be brought to trial far outweighs the request person's Article 8 rights in this case and that a decision to order her extradition would be a proportionate decision. I reject the Article 8 challenge."

43 As I have said, this appeal now falls in the territory of section 27(4) of the Extradition Act 2003, which I have already quoted. In my view, issues have been raised upon this appeal which were not raised at the extradition hearing, and evidence has been adduced which was not available at the extradition hearing. Those issues and that evidence are, first, the current position of the grandparents, which I have fully described; and, secondly, the current situation with regard to the prospective criminal trial, which is no longer a joint trial and appears now to be significantly delayed. In my view, if the evidence that is available before me today had been available and in evidence before the district judge, he would have decided certain questions at the hearing before him differently. He could not have decided that the grandparents were available to care for the children and capable of caring for the them properly, which, bluntly, would have knocked out a considerable plank that pervades and underpins his whole judgment. Further, he could not, and would not, have said:

> "The judicial authority are ready to proceed with a joint trial ... there is no significant delay ... "

44 Additionally, if the district judge had been considering this case now in May 2019 and had had the evidence of Dr Grange before him, he would, in my view, have been obliged to state in strong terms the likely effect upon all three of these children of separation from their mother if she is now extradited and detained. So, the conditions under (a)and (b) of section 27(4) are clearly satisfied.

45 The really difficult question for me is to decide, as section 27(4)(c) requires, whether "if he had decided the question in that way, he would have been required to order the person's discharge." The word "required" is a strong word. As it seems to me, it in turn requires me to consider that the district judge could only have decided this case one way in the light of all the evidence, as it now is, if it had been before him then. The test under section 27(4)(c) is not whether or not the district judge might without error have ordered the person's discharge. It is whether "he would have been required to order the person's discharge." That is a high bar on an appeal of this kind.

46 However, after very careful consideration during the course of today, I am just satisfied that that high bar is attained in this case. Undoubtedly, there are powerful factors in favour of extradition. The alleged offending is serious. It does involve alleged avoidance of the equivalent of £11 million in tax. It carries a potential sentence of up to 15 years' imprisonment. There is a constant and weighty interest in extradition and in the United Kingdom not being, or being seen as, a safe haven where people can escape proper criminal process in their home countries.

47 On the other hand, this appellant did not come here to escape extradition. Indeed, the district judge himself expressly found at paragraph 24 of his judgment that "there is no suggestion the requested person is a fugitive." She came here, as I have described, as long ago as May 2014 in order to lend support to her then partner, who was facing a criminal trial here on completely different charges. R was both conceived and born here and, so far as

I am aware, has always lived here. The question of extradition only arose for the first time in the summer of 2017.

48 Although there are those powerful factors in favour of extradition, the Supreme Court has said that proper consideration must always be given to the Article 8 rights, not only of the requested person but of other directly affected family members, such as the children of that person. The welfare of those children is not in any sense paramount, but, nevertheless, it is an important matter that requires to be considered and weighed in the balance. It does seem to me that if this appellant was now extradited to Poland, the likelihood is that she will be detained in prison for an appreciable period of time, awaiting a trial on a very indeterminate date. All three of her children will necessarily be separated from her. The evidence is that they cannot now live with the paternal grandparents. There is no evidence that there is any other family member with whom they could live. As well as the catastrophe for them of separation from their mother, these already damaged twins would face the bleak prospect of some form of public care.

49 In my view, and viewing the case in the round, if the district judge had been considering the facts as they now are, he himself would have been required to order, and indeed this district judge would have ordered, the requested person's discharge. In my view, all the conditions under section 27(4) of the 2003 Act are made out in this case. Accordingly, I have a discretion to allow the appeal and, for all the reasons I have just given, I should exercise a discretion in that way. Accordingly, I will allow this appeal, and pursuant to section 27(5) of the Extradition Act 2003 I will order the appellant's discharge and quash the order for her extradition.

50 I wish to stress that I am purely concerned on this appeal with the question of whether or not the appellant should be extradited to Poland pursuant to the Extradition Act 2003. The Secretary of State for the Home Department is currently considering whether or not to

deport the appellant. There is already an order for her deportation and, as I have described, she long ago abandoned her appeal from that order. Deportation raises different considerations from extradition, and I wish to stress that the decision whether or not to deport this mother to Poland is entirely a matter for the discretion of the Secretary of State for the Home Department. I do not seek by this decision and judgment to influence that discretion in anyway whatsoever.

_____

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

Transcribed by ***Opus 2 International Limited.***
Official Court Reporters and Audio Transcribers
5 New Street Square, London EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
admin@opus2.digital

** This transcript has been approved by the Judge (subject to Judge's approval) **