Neutral Citation Number: [2020] EWHC 2836 (Admin)

Case No: CO/955/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th October 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

MIROSLAV MOLIK	**Appellant**
- and -	
JUDICAL AUTHORITY OF POLAND	**Respondent**

- -
- -

David Ball (instructed by JD Spicer Zeb Solicitors) for the **Appellant**
Tom Hoskins (instructed by the Crown Prosecution Service) for the **Respondent**

Hearing date: 20th October 2020

Judgment as delivered in open court at the hearing

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Approved Judgment

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

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

A Permission-Stage Point of Principle

1. This is a renewed application for permission to appeal in an extradition case, in which a point of principle has arisen. The point of principle concerns the point in time on which the permission-stage judge should focus, in considering the question of the appellant requested person's accumulating remand time. Should the permission judge look at that picture as at the date at which that judge is considering the viability of the grounds of appeal? Or should the permission judge project the position as it would be before a Court hearing the substantive appeal, at some later date, if permission to appeal were granted?

2. The authorities which were before me at this hearing as relevant to accumulating remand time and the point of principle were, in date order, as follows: Kasprzak [2010] EWHC 2966 (Admin) (2.11.10, McCombe J); Wysocki [2010] EWHC 3430 (Admin) (24.11.20, Lloyd Jones J); Kloska [2011] EWHC 1647 (Admin) (10.6.11, DC: Aikens LJ, Swift J); Zakrewski [2012] EWHC 173 (Admin) (7.2.12, Lloyd Jones J); Newman [2012] EWHC 2931 (Admin) (3.10.12, DC: Pitchford LJ, Foskett J); Gruszecki [2013] EWHC 1920 (Admin) (12.6.13, Ouseley J); Jesionowski [2014] EWHC 319 (Admin) (29.1.14, Wilkie J); Malar [2018] EWHC 2589 (Admin) (4.9.18, Supperstone J); Beczer [2019] EWHC 1016 (Admin) (28.3.19, Dingemans J); Kalinauskas [2020] EWHC 191 (Admin) (6.2.20, DC: Irwin LJ, Supperstone J); Ostrzycki [2020] EWHC 1634 (Admin) (23.6.20, Lewis J). I shall return to the point of principle later.

Mode of Hearing

3. The mode of hearing was a BT conference call. Both Counsel were satisfied that that mode of hearing involved no prejudice to their client's interests. So am I. Open justice has been secured and indeed promoted. By having a remote hearing we eliminated any need for any person to travel to a Court or be physically present in a Court. The hearing and its start time were published in the cause list, where an email address was given. By sending an email and making a phone call any member of the press or public would be able to observe this hearing. I am quite satisfied that the mode of hearing was appropriate, justified and proportionate.

Introduction

4. The Appellant is aged 43 and is wanted for extradition to the Czech Republic. That is pursuant to a conviction EAW (European Arrest Warrant) issued on 14 January 2020. The EAW relates to two linked offences committed by the Appellant on 10 September 2016, when he was aged 39. The first is criminal damage (in the equivalent of £680) in breaking a car window. The second is the attempt to take that car without consent. The Appellant's conviction of those offences led to a 10-month custodial sentence, originally suspended for 3 years, imposed on 20 March 2018 and which came into effect on 8 May 2018. It is common ground that he was notified of the sentence and then left the Czech Republic. The suspended sentence was subsequently activated for breach, leading to a domestic arrest warrant in the Czech Republic on 4 December 2019. DJ Blake ordered the Appellant's extradition on 3 March 2020, for reasons given in an ex tempore judgment, after an oral hearing. Permission to appeal was

refused on the papers by Jay J on 24 September 2020. The Appellant has been on remand since 2 February 2020.

Article 8: The position analysed as at today

5. Mr Ball for the Appellant submits that, even adopting today as the correct focus in time so far as time spent on remand is concerned, it is reasonably arguable that the District Judge's conclusion that extradition would be compatible with the Appellant's Article 8 ECHR rights was wrong and should be overturned. The essence of those submissions, as I saw them, is as follows.

   i) Mr Ball emphasises that ultimately this Court's focus is on the outcome. He emphasises that he only needs today to cross a threshold of reasonable arguability. He emphasises that the District Judge expressly explained that he was not finding the Appellant to be a fugitive. He emphasises that, on the evidence, the Appellant has been in the United Kingdom since coming here in 2007 (when he was aged 29 or 30) and has subsequently had the United Kingdom as his settled base: he has a record of obtaining employment in the UK over that 13 year period; although he has had time in other countries, those were for relatively short periods of work-related travel; except that there was a return for a period to the Czech Republic between 2015 and 2017. Mr Ball says that it is not appropriate to hold against the Appellant the fact that immediately prior to his arrest on 2 February 2020 he was sleeping rough and was street homeless. The starting point therefore, it is said, is of a long period of durable primary residence within the United Kingdom, together with a settled intention to remain here. Emphasis is placed on the 4 years that have elapsed since these offences in September 2016, as a relevant factor. The Appellant has a cousin in the United Kingdom with whom he is in contact and has previously lived. The impact of extradition is relied on, including a point relating to the uncertainty arising out of Brexit. Mr Ball emphasises that, albeit not 'trivial', the offences are 'not of the utmost seriousness' and can be characterised as 'minor' or 'relatively minor' and towards the bottom end of a relevant scale.

   ii) Alongside all of those factors Mr Ball relies on the fact that, as at today and as is common ground, the Appellant has served a relevant remand period of 8 months 2 weeks and 2 days. That leaves a period of 6 weeks to serve so far as the activated 10 month custodial sentence is concerned. Relying on the line of authorities which I have already identified, and in particular Kasprzak at paragraph 21, Mr Ball submits that the short period of time remaining to be served is a factor which the Court can and should take into account. In doing so, it is not a question of the District Judge being wrong since the District Judge was looking at the matter in March 2020. This Court can, and at a substantive hearing held today would, take into account the current remand position as updating fresh evidence pursuant to the statutory scheme: see Beczer at paragraph 4.

   iii) Stepping back, and having regard to all the circumstances, Mr Ball says that it is reasonably arguable as at today that extradition of the Appellant would be Article 8 incompatible.

Mr Hoskins resists those submissions.

6. I accept the starting point, at least as reasonably arguable, so far as concerns the Appellant's presence in the United Kingdom as his principal base together with his work record. I do not accept, at least for the purpose of reasonable arguability, that Mr Hoskins is right to emphasise the Appellant's homelessness immediately prior to his arrest. I proceed on the basis invited by Mr Ball that this is not a matter that should be held against him. His extradition should not turn on whether he was rough sleeping or had somewhere to stay. Having said that, all the circumstances of his relationship with the United Kingdom and any private and family life are of course relevant.

7. Having adopted that starting point, however, in my judgment it is not reasonably arguable viewing the position as at today that the extradition of the Appellant is disproportionate and incompatible with his Article 8 rights. In my judgment, viewing the position as at today, it is clear that extradition would be compatible with Article 8.

8. So far as the passage of time is concerned, that is not in my judgment a feature on which strong weight could ever be placed in this case. It is true that the offences go back four years to 2016. But they were properly pursued through to conviction and sentence. The sentence that was imposed in March 2018 was a suspended sentence. There was an opportunity to comply but there was subsequently a default and in due course an activation. It is regrettable perhaps that no party has focused on the date of activation, and it is not clear precisely when activation of the suspended sentence occurred. But it is quite clear in my judgment that this is not a case where delay, viewed from the perspective of the Respondent and its conduct, has any real weight even arguably against extradition. The Appellant is of course fully entitled to rely on his circumstances as at the present, including any developments in his private or family life. But that is where the appropriate focus, in my judgment, plainly needs to be. I also take full account of the fact that he has not been found to be a fugitive, and that is a factor which is relevant and favourable to him.

9. So far as the seriousness of the index offending is concerned, I would not disagree with Jay J's characterisation of the offences as 'relatively minor'. However, as the District Judge rightly recognised, it is right to give proper mutual respect to the 10 month custodial sentence that was considered appropriate by the relevant authorities in the Czech Republic. It is, moreover, the case that the Appellant has breached the conditions of the suspension of that sentence. Also of relevance is the fact that the index criminality in September 2016 properly falls to be considered alongside two similar offences in the United Kingdom. These were offences of vehicle taking with damage caused to the vehicle in the course of that taking. Those offences were committed on 3 December 2013 and 21 December 2013. They led to separate custodial sentences of 4 months and 2 months respectively.

10. This is not a case, as Mr Hoskins rightly puts it, of a 'rich and deeply entrenched private life or family life'. The District Judge addressed all the relevant circumstances. There are no children or dependant relatives and there is no specific evidence relating to any particular impact on the Appellant, or the cousin, beyond that which would necessarily arise (and arise in the context of Brexit uncertainty) for a person who has lived in the United Kingdom, and been employed here in the way that he has, together with the relationship with his cousin.

11. The fact that the Appellant has the period left to be served of 6 weeks does not in my judgment fall within the category described in the authorities, deliberately, as "a very short period of time": see Kasprzak at paragraph 21 and the subsequent cases quoting and endorsing that approach. The Court considering Article 8 proportionality must, in principle, respect the time left to be served and which is required, by the requesting state authorities, to be served there: see Kasprzak again at paragraph 21 ("If a sentence has been passed this court should take the view that the sentence is, all things being equal, to be served") and Ostrzycki at paragraph 34 ("There is a high public interest in honouring extradition arrangements and that public interest is not diminished by reason of the length of time left to be served in custody"). The court does not evaluate whether sufficient time has been served: see Kloska paragraph 27 ("except in most unusual circumstances, it cannot be for the courts in England to form a view on whether the person to be extradited has or has not served enough of his sentence that was imposed by the requesting judicial authority") and Zakrzewski at paragraph 48. This is not a case like Jesionowski where, although there was still a month of an eight-month sentence to be served, the Court was satisfied that early release provisions applicable in the requesting state would irresistibly have been applied to entitle the appellant to immediate release upon return: see paragraph 19. I accept that all cases are fact sensitive and that the threshold is only reasonable arguability. But, in my judgment, a reliable illustrative working example is the case of Malar: see paragraph 13. In that case Supperstone J explained that "there is nothing inherently disproportionate in the surrender of the appellant to serve a sentence that amounts to weeks rather than months". On the facts of that case the appellant had served 4 months 1 week and 2 days of a 5 month term. His extradition was held to be proportionate and article 8 compatible. That conclusion does not drive the conclusion in the present case, but it serves to illustrate and reinforce the points made about mutual respect and "a very short period" being capable of being a factor (Kasprzak paragraph 21).

12. Positing a substantive appeal hearing as at today, and applying the 'stepping back and look at the outcome' approach in Love v USA [2018] EWHC 172 (Admin) at paragraph 26, I am quite satisfied that there is no realistic prospect of this Court concluding that extradition would be incompatible with the Appellant's Article 8 rights in all the circumstances.

The Point of Principle: The Correct Focus in Time

13. I described the point of principle at the start of this judgment. Having identified it from the papers, I alerted both parties yesterday morning. That enabled both Counsel to provide any authorities they regarded as relevant. It also enabled Counsel for the Respondent to make a submission – in writing or orally – on the point, if it wished to do so. The point is one which squarely arose out of the existing grounds of appeal, but the grounds (understandably) did not pinpoint the specific issue relating to the permission stage judge and the correct focus in time. In the event, the Respondent and Mr Hoskins decided that it was appropriate that he should attend the renewed permission hearing, as was their entitlement, rather than provide written submissions. (In the event he made submissions on the entirety of the application for permission to appeal, which he was fully entitled to do.) I am grateful to both Counsel for their assistance.

14. I considered the option of granting permission to appeal so that the point of principle could be addressed by a Court at a substantive hearing, if that Court was satisfied that it was appropriate to do so (in circumstances where the point in fact would necessarily have by then become academic in the instant case). I am satisfied that that is not necessary and that it would not be appropriate to grant permission to appeal so that a Court at a substantive hearing can consider this point. The question is one of law and concerns the permission stage. I have heard argument and have read the authorities said by the parties to be relevant. I have moreover reached a clear view as to what, in my judgment, is the correct answer in law, beyond reasonable argument.

15. As I see it, the argument which could be put on an appellant's (and the Appellant's) behalf is this. The Court should address the viability of the grounds of appeal relating to the implications of time spent on remand by focusing, not on the position as at the date on which permission to appeal is being considered, but on the position as it would likely be at the date of any substantive hearing of the appeal, if permission to appeal were granted. The Court should thus ask itself this question:

> Is there a realistic prospect that the Court at that later substantive hearing, having regard as fresh evidence (see Beczer) to the remand picture as at that date, would allow the appeal?

If there is a realistic prospect of that kind, the permission judge should then grant permission to appeal on the basis that the appeal is reasonably arguable: it has a realistic prospect of success at a substantive hearing. It is nothing to the point that, as at the date on which permission to appeal is considered, a Court conducting the substantive hearing would dismiss the appeal, to the satisfaction of the permission judge beyond reasonable argument.

16. In my judgment, the point of principle arises in precisely this way in the circumstances of the present case. Mr Ball adopts the line of argument which I have identified. Both Counsel made submissions on other related matters, as to particular circumstances. For example, I was addressed on what confidence the Court could have in this case regarding what the remand position would be at the point of time of a later substantive hearing. I approach this case on the following basis. It is highly likely that a substantive hearing in this case would be at least 6 weeks away. It is highly unlikely that the Appellant would in the meantime have been released on bail. It is therefore highly likely that, were I to grant permission to appeal, by the time of the substantive hearing of the appeal the position would be reached where the Appellant would be entitled to succeed, on the basis that the 6 weeks remaining to be served would by then have been served. There is certainly a realistic prospect that that would be the position, but in fact there is in my judgment a level of confidence far, far higher than that.

17. It was common ground that once 'the line is crossed' – that the time on remand served exceeds the time to serve – extradition is at that point necessarily inappropriate. The cases are clear about that and put it alternatively as an 'abuse of process' to maintain the pursuit of extradition or as a necessary violation of Article 8 (extradition being on any view disproportionate): see Wysocki at paragraphs 29 and 34; Newman at paragraph 19; and Ostrzycki at paragraph 35.

18. Where a Court is on the very threshold of remand exceeding time to serve, it can be appropriate to make an order for discharge but defer its coming into effect so as to match the 'crossing of the line': see Beczer. A parallel position arises in an accusation EAW case where the Court is quite satisfied that the remand period already served is more than any custodial sentence following extradition would be: see Kalinauskas at paragraphs 20-21.

19. In my judgment, the clear answer to the point of principle is that the permission stage judge considers article 8 compatibility by reference to remand time served as at the time when permission to appeal is being addressed, positing – as it were – a substantive hearing on that date. The permission stage judge does not project forward to the position at a substantive hearing, except in particular circumstances where the appellant has in any event a durable basis for remaining in the United Kingdom, independently of the question of remand time served and a grant of permission to appeal based on remand time served. In my judgment, that is clearly correct as a matter of principle, but it is also strongly supported (i) by considering questions of legal policy and (ii) by considering the operation of the extradition process following a refusal of permission to appeal.

20. I can start with the final point I have just made: the operation of the extradition process following a refusal of permission to appeal. Where the Court is satisfied beyond reasonable argument, at the time of considering permission to appeal, that extradition would not be incompatible with Article 8, having taken full account of the period which has so far been spent on remand, the proper approach is to refuse permission to appeal. Under the statutory and legal machinery, what is then able to happen is the prompt removal from the jurisdiction of the individual. That removal is compatible with Article 8 rights. The Court has evaluated the Article 8 compatibility and found, beyond reasonable argument, that removal would be article 8 compatible. There is no question of the appellant being within the United Kingdom, in order for the position to be evaluated at a hearing at a subsequent stage. Such a position would be generated only by the grant of permission to appeal by the Court. In principle, that analysis supports the focus in time as being on the date when permission to appeal is being considered.

21. I interpose this. If some subsequent intervening event were to occur which meant that the individual was not in fact extradited from the United Kingdom, different considerations could then arise, as a consequence of those events. There are mechanisms within the statutory scheme to cover that. Once remand time was served which extended beyond the time left to serve in the requesting state, the appellant would stand to be released. There is also a mechanism under the statutory scheme to reopen an appeal or application for permission to appeal, based on change of circumstances "to avoid real injustice": see Criminal Procedure Rules r.50.27.

22. But what cannot be right in my judgment is for permission to appeal to be granted, in circumstances where there is no viable ground of appeal at the time when permission to appeal is granted, and where there is no independent basis on which the appellant would be remaining within the United Kingdom, solely because the court can foresee clearly that if permission to appeal is granted, by the time of the substantive hearing the circumstances will have changed so as to support the discharge of the appellant. Permission to appeal cannot in my judgment serve to have that 'self-generating' function.

23. None of the authorities that are relied on before me specifically address this question. All of them are judgments after substantive appeal hearings, which consider the position as things then stand. None of them, so far as Counsel and I have been able to ascertain, give any description or analysis of the function or approach of a judge dealing with permission to appeal based solely (still less solely and purely prospectively) on the ongoing remand point. Having said that, there are in my judgment passages within the authorities that serve to assist the analysis on the point of principle.

24. One theme in the line of authorities is that in principle the extradition process, and the approach of the courts to it, should respect the fact that time is to be served at the behest of the requesting state in the requesting state. I have referred to this point already. Again, see Kasprzak at paragraph 21 ("If a sentence has been passed this court should take the view that the sentence is, all things being equal, to be served"), endorsed in Wysocki at paragraph 34; also Ostrzycki at paragraph 34 ("There is a high public interest in honouring extradition arrangements and that public interest is not diminished by reason of the length of time left to be served in custody"). That feature, in my judgment, serves to support the approach that if extradition – following the refusal of permission to appeal – to serve the balance of time in the requesting state would be Article 8 compatible, permission to appeal should be refused so that that course is promoted and not undermined.

25. A second theme in the authorities also supports the analysis. It concerns the idea of the pursuit of an appeal in order to produce an outcome whereby the remand period can subsequently be relied on to support discharge of the individual. In Gruszecki (at paragraph 8), Ouseley J was considering at a substantive hearing the balance of time to be served. Counsel had made an observation relating to the subsequent pursuit of steps open in the extradition procedure, specifically the time that would be taken if an application were made to certify a point of law of general public importance with a view to seeking to appeal to the Supreme Court. Ouseley J made clear that he would not be prepared to posit prospectively such a pursuit, in order to evaluate Article 8 proportionality in the context of remand time served. In the course of his observations he made these more general points (underlining in quotes, here and below, connotes emphasis added):

> "I am not prepared to give weight in judging proportionality to the way in which an appellant may seek to waste the court's time, in making unmeritorious appeals and applications and then relying upon what has been achieved by way of additional time spent in this country at public expense, to defeat an extradition warrant."

Ouseley J went on to say:

> "The court … should be very cautious about allowing a proportionality advantage to someone who … abuses the court's appeal procedures as an opportunity to reduce the time to be spent in the Polish prison and to burnish a proportionality argument."

26. There is no suggestion, nor could there be, in the present case that Mr Ball is somehow 'abusing the extradition process' by raising the remand point and taking the position that he does on the point of principle. His case, already addressed in this

judgment, is that he had a free-standing basis for seeking permission to appeal. Nor does it necessarily follow, at least in such a case, that there would be any abuse by any appellant or legal representative in a case in which the point of principle also squarely arises. However, what is of interest in my judgment from Ouseley J's analysis is its resonance, in legal policy terms, for the question of principle with which I am concerned. To grant permission to appeal solely on the basis that, by the time of a substantive hearing, time on remand would then support the appellant's release would involve the Court itself facilitating the pursuit of an appeal which subsequently would "achieve" by way of additional time the "defeat" of an extradition warrant; it would involve the Court allowing the pursuit of the appeal procedure solely as an opportunity to "burnish a proportionality argument".

27. That point of legal policy and public policy strongly reinforces the position of principle which I have described. In fact, in my judgment, the policy position can be traced back to the very beginning of the line of relevant authorities. In Kasprzak at paragraph 21 McCombe J articulated the principle applicable to an Article 8 analysis (to which I have referred) that "in certain circumstances the fact that a very short period of time remains to be served may be circumstances that the court will take into account". He went on to articulate the principle (to which I have also referred) that: "If a sentence has been passed [by the respondent judicial authorities] this court should take the view that the sentence is, all things being equal, to be served". McCombe J next recorded, treating it as another relevant factor in the Court's approach, the following submission by Counsel, that:

> " …any indication from the courts that time spent in custody could gradually build up a 'proportionality' argument would encourage delays on behalf of those sought to be extradited in prolonging the proceedings so as to raise such a point".

The insight in that submission, which McCombe J plainly considered relevant, engages the same point of public and legal policy to which I have referred. The point recorded by McCombe J was subsequently reinforced in Wysocki. That, as I have explained, was a case where 'the line was crossed' and the appellant was discharged (paragraphs 29 and 34). Lloyd Jones J (at paragraph 27) quoted McCombe J's judgment in Kasprzak, including the observation I have just set out, about courts not acting to "encourage delays … in prolonging the proceedings so as to raise such a point". Lloyd Jones J said this, of an objection which had been raised to discharge for 'crossing the line':

> "I do not accept the submission of [Counsel] that such a conclusion would undermine the scheme of the European arrest warrant by opening up arguments on proportionality under Article 8 based on the time left to serve. The decision of McCombe J in Kasprzak, with which I am in total agreement, shows that the courts will not permit that to happen."

The Courts 'not permitting that to happen', in my judgment, reflects the idea that the Court not act to promote the prolonging of proceedings so that points based on time served on remand and time left to be served can then subsequently succeed.

28. Mr Ball submitted that the point of principle can be tested by taking an example of a pregnant woman who was known to be due to give birth some two months down the

line, in a case in which it is known that the substantive hearing would be more than two months down the line. I agree with him that that is one of the examples that could be posited to test the point. Suppose that the Court at the permission to appeal stage has before it an individual who can be said with confidence to be going in the future to undergo some event or circumstance that would thereafter make them unfit to fly for the foreseeable future. The birth of a child may fall into that category, but it is not difficult to think of other examples that would. Suppose, now, the permission-stage Court is confident that the substantive hearing would take place after that position has been reached. The Court would be able to see that there is at least a realistic prospect that that substantive appeal, at that stage, would then succeed. But testing the analysis, in my judgment, the correct answer is this. The Court considering permission to appeal should focus on the present, and the implications of being extradited now. In this example, the requested person is pregnant but is currently fit to fly. If permission to appeal is refused, she can then properly be extradited. The statutory scheme is so designed. There would be no question of incompatibility with human rights in removing her now (whether based on fitness to fly or the real risk of relevant harm in the requesting country following extradition), because the Court has assessed that very question and has decided that it is not reasonably arguable that extradition now would involve a breach of any human rights. Why, then, should such an appellant remain in the United Kingdom solely as a consequence of the Court granting permission to appeal, so as then to produce the outcome that the events which take place in this country then render extradition incompatible with human rights? Under the proper and disciplined application of the statutory scheme, the correct and principled answer in such a case is to refuse permission to appeal allowing the extradition which is human rights compatible then to take place. There is no breach of human rights.

29. In my judgment, the invitation of “flexibility, dynamism, pragmatism and common sense” which Mr Ball made did do not weigh against this analysis, still less displace it.

30. Finally, I return to the qualification that I made about the situation where there is a freestanding durable basis to stay within the United Kingdom.

i) Suppose a case in which there is, independently, to be a stay on extradition removal because a test case is going through the Courts. Or suppose a case in which an international pandemic has grounded all flights and it can therefore be said, with confidence, that there will be no removal for a period of months. Or suppose a case in which the Court is, independently, granting permission to appeal on some other ground so that there will necessarily be a substantive hearing at a subsequent date.

ii) In cases such as these, in my judgment, the permission-stage judge taking a “flexible, pragmatic and common sense” approach and promoting the interests of justice, against the backcloth of the extradition framework, would appropriately grant permission to appeal on the basis of the confidently projected viability of the ‘remand time served’ position as it would subsequently stand to be at a substantive hearing. The key difference, in all those situations, is that it is known that the appellant will remain in the United Kingdom, on a basis independent of the Court’s grant of permission to appeal on the remand time/Article 8 point.

iii) So, the point of principle arises where it is the grant of permission to appeal on the remand time served point (as it would stand at the future substantive hearing), and only the grant of permission to appeal on that point, that would give rise to the appellant remaining in the United Kingdom and thus able to rely on subsequent events to succeed. Put another way, the point of principle arises where as a consequence of the refusal of permission to appeal the individual will stand to be removed now, in a way and in circumstances in which the Court can with confidence conclude that there is no human rights incompatibility, and indeed no reasonably arguable human rights incompatibility. That is this case.

Conclusion

31. For those reasons, and repeating my gratitude to both Counsel for their assistance, permission to appeal in this case is refused.

20.10.20