



Neutral Citation Number: [2021] EWHC 1073 (Admin)

Case No: CO/4469/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 27<sup>th</sup> April 2021

**Before:**

**MR JUSTICE FORDHAM**

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**Between :**

<b>MARIUSZ KROLOKOWSKI</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>DISTRICT COURT IN LEGNICA (POLAND)</b>	<b><u>Respondent</u></b>

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**Rebecca Hill** (instructed by Gillen De Alwis Solicitors) for the **Appellant**  
The **Respondent** did not appear and was not represented  
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Hearing date: 27<sup>th</sup> April 2021

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 :**

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is aged 36 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant (EAW) issued on 25 January 2017 and certified on 2 June 2017. The EAW relates to an index offence of fraud committed on 17 June 2005 in Poland. The Appellant used a forged certificate of employment to acquire a mobile phone, causing £116 (equivalent) loss to the phone company. He was sentenced on 11 October 2012 (an order which became final on 19 October 2012) to 12 months custody, suspended for 3 years (to 18 October 2015), on condition that he paid compensation for the loss within 2 years (by 18 October 2014). He failed to pay the compensation and the suspended sentence was activated. He came to the United Kingdom in 2015. He was arrested on 27 July 2020 and has been on remand ever since. On 23 October 2020 DJ Ezzatt ordered the Appellant's extradition. The Appellant appealed, relying on (1) the well-known section 2 Wozniak/Chlabicz ground and (2) Article 8 ECHR (including by reference to the period of qualifying remand served). On 22 March 2021 Eady J directed a stay of the application for permission to appeal on the section 2 Wozniak/Chlabicz ground, with the familiar mechanism for further written submissions within 14 days of the judgment of the Divisional Court in those linked cases (now due to be heard mid-May 2021). Eady J refused permission to appeal on the Article 8 ground, which is renewed before me.

Mode of hearing

2. The mode of hearing was by BT conference call. Ms Hill was satisfied, as am I, that that mode of hearing involved no prejudice to the interests of her client. I am satisfied that the mode of hearing was justified and appropriate. The open justice principle was secured in the usual ways: the case and its start time were published in the cause list; also published there was an email address usable by any member of the press or public who wished to observe this public hearing; the hearing was recorded; this ruling will be released in the public domain.

Article 3 (prison conditions): Stay

3. Prior to the hearing, I considered it appropriate to ensure, by an email copied to the Respondent, that the Appellant's representatives were aware of the second wave of Polish stays pending resolution of a recognised live issue relating to prison conditions and Article 3: see Antoniewicz [2021] EWHC 1022 (Admin) at paragraph 5. The Respondent, as the 'repeat player' in these Polish cases, will be well aware of the issue and how this Court has been dealing with it. Ms Hill has this morning – as she indicated yesterday that she would – made a written application for permission to amend the grounds of appeal to take that Article 3 point, inviting the Court to order a stay. I am satisfied that it would not be in the interests of justice or the public interest for the Appellant, in principle equally affected by this point of law recognised and pending before this Court, to be denied the opportunity to benefit from the consequences of a favourable judicial conclusion on that issue. The Respondent did not respond to the application this morning, which was unsurprising given that it was at the last minute and the Respondent had, as is the practice, notified the fact that it did not intend to participate in today's hearing.

4. I am satisfied that it is appropriate and in the interests of justice, having regard to the overriding and special objectives, to order as follows:
- (1) The application for permission to amend the Appeal Notice to add the Article 3 (prison conditions) ground in Litwinczuk CO/3399/2020, Lukaszek CO/3852/2020 and Tadaszak CO/3941/2020 (“the Article 3 Cases”) is stayed pending final determination of the Article 3 Cases by the High Court. The Appellant shall, within 14 days following the date of that final determination (a) inform the Court and the Respondent whether he intends to pursue an application for permission to appeal on that ground and (b) if so file and serve written submissions in support.
  - (2) In the event that the Appellant, within 14 days following final determination of the Article 3 cases, informs the Court that he does intend to pursue an application for permission to appeal on the Article 3 ground, that application shall be determined on the papers by a Judge as soon as practicable thereafter. Otherwise, the application for permission to appeal shall be dismissed 14 days after final determination of the Article 3 cases.
  - (3) The parties have liberty to apply, in writing on notice, to vary or discharge paragraphs (1) or (2) of this Order.

The purpose of liberty to apply is twofold. First, it protects the Respondent who should have the opportunity to consider the position in the present case and, if it wishes to do so, to apply to vary or set aside my order. Secondly, it protects both parties in case there is some subsequent development rendering a different order more apt.

#### Article 8

5. That leaves the Article 8 issue, on which I am satisfied that it is appropriate to grant permission to appeal. The reasons are these. First, the Appellant has two “freestanding durable bases” for remaining in the United Kingdom: the Wozniak stay and, now, the Article 3 stay. In those circumstances I am satisfied that it is appropriate to consider qualifying remand by ‘projecting forward’: see Molik [2020] EWHC 2836 (Admin) paragraph 30. Given the foreseeable timings of Wozniak and the Article 3 cases, and the 14 day mechanisms built into the orders for the two stays, there is a sound basis for ‘projecting forward’ the Appellant still being present in the UK and having served ongoing qualifying remand until July 2021 (see Sinani [2021] EWHC 897 (Admin) at the end of paragraph 8). Secondly, as at 1 July 2021 – provided that he continues to be on remand – the Appellant will be into the 12 month of qualifying remand. In those circumstances, the Article 8 ECHR issue will be a reasonably arguable ground for discharge of the Appellant – and not extradition to Poland – even if the Wozniak and Article 3 grounds have failed in the various test cases. I listed some of the ‘qualifying remand’ cases in Molik at paragraph 2 and can add (thanks to Ms Hill) Chmura [2013] EWHC 3996 (Admin); as well as Chechey [2021] EWHC 427 (Admin) at paragraph 79 (discussed in Sinani at paragraph 6). The ‘line will be crossed’ (as I described it in Molik at paragraph 17) on or about 26 July 2021. There would be a powerful basis for a Court – considering this case at a hearing in July 2021 – making an order for deferred discharge (Molik at paragraph 18, citing Beczer [2019] EWHC 1016 (Admin)): this type of order is illustrated by paragraph 4 of the order which I set out in Krzyanowski [2020] EWHC 3401 at paragraph 9. Thirdly, although in the present case the Appellant

has no family or dependents in the United Kingdom, the Article 8 private life considerations in the Article 8 balance do include these facts: that the index offence was now 16 years ago (committed aged 21); that it is ‘not the most serious’ offence; and that the Appellant has no convictions in those 16 years, including in the years in the UK since coming and being settled here in 2015.

6. For all these reasons, there is a realistic prospect that this Court on a substantive appeal would order discharge on the Article 8 ground, the Appellant having in the meantime remained – for good reason – in the UK and on qualifying remand. I will therefore further order as follows:
- (4) Permission to appeal on the Article 8 ECHR ground is granted.
  - (5) The substantive appeal shall have a revised time estimate of one hour and shall be listed for the first available date after 14 July 2021.
  - (6) The Respondent shall have liberty to apply in writing on notice to vary paragraph (5) of this Order.

The reason for choosing 14 July 2021 is because that strikes a sensible balance, in my judgment, to ensure that the Wozniak and Article 3 (prison conditions) position has settled, and its implications considered and resolved, and because it gives a pragmatic time-frame given the Beczer/Krzyanowski deferred discharge outcome which, on the face of it, is a looming possible resolution of this case. It is possible, I do not know, that common ground may emerge as to that resolution. The reason for a specific liberty to apply to the Respondent is to allow it an opportunity to urge a different timescale for this case, if the Respondent considers there to be justification for doing so. I have considered whether it would be more appropriate to direct today that any Wozniak or Article 3 (prison conditions) follow-up submissions be considered by the Judge dealing with the substantive Article 8 hearing, but: (a) I think that those matters, were they to arise, will be most efficiently dealt with on paper alongside other lookalike cases in the pile; (b) I see no reason to disturb Eady J’s order as to Wozniak; and (c) as to Article 3 the parties have their liberty to apply in paragraph (3) of my Order by which they could ask the Court to revisit my paragraph (2), if there is some basis or development which they consider justify doing so.