Neutral Citation Number: [2022] EWHC 69 (Admin)

Case No: CO/4842/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/01/2022

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

JOANNA KLAZINSKA	**Appellant**
- and -	
CIRCUIT COURT IN LODZ, POLAND	**Respondent**

- -
- -

Catherine Brown (instructed by **Sonn Macmillan Walker**) for the **Appellant**
Reka Hollos (instructed by **CPS**) for the **Respondent**

Hearing date: **26 October 2021**

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Approved Judgment

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Mr Justice Julian Knowles:

Introduction

1. This is an appeal under s 26 of the Extradition Act 2003 (EA 2003) against the order for the Appellant's extradition to Poland made by a district judge on 23 December 2020. The Appellant's extradition is sought pursuant to a European arrest warrant (EAW) that was issued by the Regional Court of Lodz, Poland, on 7 July 2020 and certified by the National Crime Agency on 20 August 2020.

2. The EAW seeks the extradition of the Appellant to execute a custodial sentence of two years' imprisonment. The sentence was imposed in respect of one offence of fraud committed between 2 September 2004 and 29 October 2004. Box E specifies the underlying conduct: the Appellant collected payment from teachers at different schools in Lodz and Zgierz for textbooks which she had no authority to do and without providing the funds to the Demart publishing house, her employer, resulting in financial loss to the company of PLN 10,360.84. The Framework List has been marked to designate the conduct as 'swindling'. Following her arrest, the Appellant admitted the offence. She kept the money in *lieu* of wages she felt that she was owed.

3. Box F of the EAW states that the Appellant was sentenced to two years' imprisonment suspended for five years with the condition to repay the monies within the five year term.

4. The Appellant failed to repay the money, and failed to answer court summonses, having left Poland without notifying the authorities, and so her suspended sentence was activated. She first went to Cyprus for a number of years and then came to the UK in November 2015.

5. The EAW was then issued and she was arrested in the UK on 2 September 2020.

6. By a letter dated 13 October 2020, the Respondent provided the following further information:

    a. The Appellant pleaded guilty to the offence in the EAW and agreed to the sentence proposed by the prosecutor.

    b. The judgment of the District Court of Lodz of 11 April 2006 was posted to the address provided by the Appellant.

    c. Prior to the decision of 16 June 2011 to activate the sentence, the Appellant had been summoned on multiple occasions to carry out her duty.

    d. The Appellant was summonsed to attend prison on 11 September 2011 but did not appear. She was unlawfully at large from this date.

    e. On 9 November 2011, the Judicial Authority learned that the Appellant had left Poland and had not been resident at the address she provided to the court for several months.

f. On 28 November 2011, the District Court for Lodz issued an arrest warrant for the Appellant.

g. In February 2020, the Police established that the Appellant was living in the UK and an EAW was issued.

h. Throughout the duration of the criminal proceedings and the period of her suspended sentence, the Appellant was under an obligation to appear on every summons issued for her attendance and to notify the court of every change of address lasting for more than seven days.

i. The Appellant was advised by her probation officer of the risks if she failed to comply with the requirements of her suspended sentence.

j. The Judicial Authority considers the Appellant to be a fugitive. She did not redress the loss caused to the victims as required by the conditions of her sentence; nor did she notify the court or her probation officer of her change of address including her departure from Poland as she as required to do.

k. The Appellant was not legally represented during the criminal proceedings.

7. The matter was heard by District Judge Rimmer in November 2020. The Appellant was unrepresented. In a written judgement handed down on 23 December 2020 the Appellant's extradition was ordered.

8. On 21 May 2021 Sir Ross Cranston sitting as a High Court judge granted the Appellant permission to appeal on the ground that extradition would be incompatible with her rights under Article 8 of the European Convention on Human Rights (the ECHR). That was Ground 2. Ground 1 was that reforms to the Polish judiciary in recent years have undermined the rule of law to the extent that Polish EAWs cannot now be regarded as having been issued by judicial authorities as required by s 2 of the Extradition Act 2003 and the Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member states of the European Union (the EAW Framework Decision).

9. This issue was fully considered, and rejected, by the Divisional Court in *Wozniak v The Circuit Court in Gniezno, Poland* [2021] EWHC 2557 (Admin) and nothing now remains of that ground of appeal in the Appellant's case (which was stayed pending the decision in *Wozniak*), the Court having refused a certificate for an appeal to the Supreme Court under s 32(4) of the EA 2003. The Appellant's solicitor confirmed after the hearing that Ground 1 was no longer being pursued.

10. In relation to Ground 2, Ms Brown argued on the basis of evidence, much of which was not before the district judge, that he erred in finding that the Appellant's extradition would not be incompatible with her Article 8 rights. The evidence focusses on the Appellant's husband's health and also her own health, although other matters were also touched upon.

The district judge's judgment

11. The district judge's factual findings are set out at [55] of the judgment. He found, in summary, that: (a) the Appellant was 53 and had arrived in the UK in 2015 to be with her daughter; (b) she is unwell, with high blood pressure, as is her husband with a history of high blood pressure and heart attack; (c) documents sent in April 2016 in Poland regarding her sentence were likely received by her husband or son; (d) he did not find that the Appellant was credible in her denial of knowledge of the court date for sentencing; if she did not know it was through lack of enquiry or proper diligence, and she was therefore voluntarily absent; (e) the Appellant did not have a trial but consented to the sentence; (f) she partly engaged with the sentence and her probation officer and repaid some of the money, but most of it remained unpaid; (g) she did not maintain contact with probation for five years as she was required to do; (h) the Appellant knew she had to advise the Polish authorities of her change of address; (i) the Appellant was a fugitive because she left Poland in the knowledge she had not complied with the conditions of her sentence; (j) the Appellant had given dishonest evidence when she said her probation officer had encouraged her to leave Poland and only pay part of the compensation; (k) she may not have been aware of the activation of her sentence but she knew that could be the consequence of non-compliance with conditions; (l) she had been unlawfully at large since 11 September 2011, the date she was summonsed to prison.

12. At [56]-[58] the judge expanded upon his finding that the Appellant was fugitive, by reference to the relevant case law, including *Wisniewski and others v Regional Court of Wroclaw, Poland* [2016] 1 WLR 3750 and *Veronica De Zorzi v Attorney General Appeal Court of Paris (France)* [2019] EWHC 2062 (Admin)**.** He concluded to the criminal standard that she had knowingly left Poland during the probationary part of her suspended sentence without informing the authorities and in breach of the obligations imposed upon her, of which she was aware.

13. The judge addressed the Article 8 balancing exercise at [67] to [75]. He reminded himself of the principles arising from the leading cases on Article 8 (considered below). He identified the factors in favour of and against extradition [70] and proceeded to carry out the requisite balancing exercise ([71]-[74]).

14. Among the factors identified by the judge in favour of extradition were that: (a) the amount involved in the fraud was not trivial and schools were taken advantage of; (b) the period to be served of two years is not insubstantial; (c) any delay was caused by the Appellant being a fugitive; (d) there is a public interest that those convicted of crimes should serve there sentence, and there is a 'constant and weighty' public interest in extradition treaties being honoured; (e) the Appellant is a fugitive.

15. The three factors identified by the judge as weighing against extradition were that: (a) the offending took place in 2004, over 16 years ago at the relevant time, and so were 'moderately old'; (b) the Appellant lived openly, first in Cyprus and then in the UK for over five years, during which time she worked and contributed to the economy; (c) she has a husband who is in poor health who is likely to feel an emotional and financial impact if she were to be extradited.

16. At [72] the judge said that whilst the consequences of extradition for the Appellant might be serious, they would not be exceptionally severe. Family members including her daughter and son could assist her husband. The Appellant's husband could find

work or seek benefits without her; he had managed without her whilst she was in Cyprus. No medical evidence had been supplied about the Appellant or her husband and there was no reason to think that the Polish authorities would not be able to provide proper care for her. At [73] the judge referred to the possibility of proceedings in Poland and whether they might result in clemency and the Appellant being able to return to the UK than otherwise. For these reasons, he concluded that extradition would not be a disproportionate interference with the Appellant's Article 8 rights.

The legal framework

17. The application for permission to appeal is brought until s 26 of the EA 2003:

> "26 Appeal against extradition order
>
> (1) If the appropriate judge orders a person's extradition under this Part, the person may appeal to the High Court against the order.
>
> (2) But subsection (1) does not apply if the order is made under section 46 or 48.
>
> (3) An appeal under this [section—]
>
> (a) may be brought on a question of law or fact, but
>
> (b) lies only with the leave of the High Court.
>
> (4) [Notice of application for leave to appeal] under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order is made.
>
> (5) But where a person gives notice of application for leave to appeal after the end of the permitted period, the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given."

18. Section 27 details the powers of the High Court in relation to an appeal lodged under s 26:

> "27 Court's powers on appeal under section 26
>
> (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 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.

19. Section 27(4)(a) of the Act permits this Court to consider evidence that was not raised or available at the extradition hearing. The receipt of fresh evidence on appeal was considered in *Szombathely City Court, Hungary v Fenyvesi* [2009] 4 All ER 324. The Court said at [28]-[35]:

> 28. The appeal is brought under section 28 of the 2003 Act. The relevant conditions for a successful appeal in this case are in section 29(4) to the effect that:
>
> > '(a) … evidence is available that was not available at the extradition hearing;
> >
> > (b) the … evidence would have resulted in the judge deciding the relevant question differently….'
>
> so that he would not have been required to order the respondents' discharge.

29. The statutory provenance and obvious parliamentary intent of the 2003 Act does not favour a liberal construction of these provisions. One aim of the European Framework Decision, as given in paragraph 5 of its preamble, was to remove complexity and potential for delay inherent in extradition proceedings – see also the opinion of Lord Hope of Craighead in *Dabas v High Court of Justice, Madrid* [2007] AC 31 at paragraph 53; and Lord Neuberger in *Mucelli v Albania* [2009] UKHL 2 at paragraph 66. Article 17 of the Framework Decision provides in terms that a European Arrest Warrant shall be dealt with and executed as a matter of urgency. Time limits are provided for and section 31 of the 2003 Act and the resulting practice direction (paragraph 22.6A of the Part 52 Practice Direction) predicate a speed of proceeding which was scarcely achieved before the district judge in the present case, let alone upon an appeal at which large amounts of fresh evidence might freely be admitted. As we say, Mr Caldwell accepted that it was beyond the real contemplation of the legislation – if not literally beyond its technical scope – that fresh evidence might generate the need for a full rehearing in this court.

30. Mr Caldwell rightly did not contend that evidence that "was not available at the extradition hearing" simply meant evidence which was not adduced at the extradition hearing. He referred to paragraph 3 of the judgment of Latham LJ in *Miklis v Lithuania* [2006] EWHC 1032 (Admin) concerning section 27(4) of the 2003 Act, which is the materially identical provision to section 29(4) for appeals against an extradition order. Latham LJ said that the word "available" makes it plain that the court will require to be persuaded that there is some good reason for the material not having been made available to the district judge. He did not consider that the requirements of *Ladd v Marshall* had to be met, where not only the liberty of the individual, but also matters relating to human rights are in issue. Any suggestion of an appellant keeping his powder dry would be viewed with some scepticism. Latham LJ was prepared to accept that the material provided by one person in *Miklis* could not have been obtained in time for the hearing before the district judge. He was less convinced about other medical evidence, but in the circumstances was prepared to admit it.

32. One reading of this passage suggests a discretionary latitude which the wording of the section does not readily provide. In addition, the passage does not address the further restrictive condition in section 29(4)(b) that the fresh evidence would have resulted in the judge deciding the relevant question differently, which is more restrictive than the parallel considerations in *Ladd v Marshall* or section 23 of the 1968 Act.

33. In our judgment, evidence which was "not available at the extradition hearing" means evidence which either did not exist at the time of the extradition hearing, or which was not at the disposal of the party wishing to adduce it and which he could not with reasonable diligence have obtained. If it was at the party's disposal or could have been so obtained, it was available. It may on occasions be material to consider whether or when the party knew the case he had to meet. But a party taken by surprise is able to ask for an adjournment. In addition, the court needs to decide that, if the evidence had been adduced, the result would have been different resulting in the person's discharge. This is a strict test, consonant with the parliamentary intent and that of the Framework Decision, that extradition cases should be dealt with speedily and should not generally be held up by an attempt to introduce equivocal fresh evidence which was available to a diligent party at the extradition hearing. A party seeking to persuade the court that proposed evidence was not available should normally serve a witness statement explaining why it was not available. The appellants did not do this in the present appeal.

34. The court, we think, may occasionally have to consider evidence which was not available at the extradition hearing with some care, short of a full rehearing, to decide whether the result would have been different if it had been adduced. As Laws LJ said in *The District Court of Slupsk v Piotrowski* [2007] EWHC 933 (Admin) at paragraph 9, section 29(4)(a) does not establish a condition for admitting evidence, but a condition for allowing the appeal; and he contemplated allowing fresh material in, but subsequently deciding that it was available at the extradition hearing. The court will not however, subject to human rights considerations which we address below, admit evidence, and then spend time and expense considering it, if it is plain that it was available at the extradition hearing. In whatever way the court may deal with questions of this kind in an individual case, admitting evidence which would require a full rehearing in this court must be regarded as quite exceptional.

34. Section 29(4) of the 2003 Act is not expressed in terms which appear to give the court a discretion; although a degree of latitude may need to be introduced from elsewhere. As Latham LJ said in *Miklis*, there may occasionally be cases where what might otherwise be a breach of the European Convention on Human Rights may be avoided by admitting fresh evidence, tendered on behalf of a defendant, which a strict application of the section would not permit. The justification for this would be a modulation of section 29(4) with reference to section 3 of the Human Rights Act 1998. But such Human Rights Act considerations do not extend for the benefit of judicial authorities seeking the enforcement of a European Arrest

> Warrant for whom section 29(4) is of no avail if they are unable to come within its clear terms. This apparent imbalance between defendants and judicial authorities arises from the fact that a defendant may have the benefit of Human Rights considerations which the judicial authorities do not. We say this without overlooking the decision of a division of this court in *Bogdani v Albanian Government* [2008] EWHC 2065 (Admin), where the court admitted in the interests of justice a further explanation of Albanian statutory law to assist in its construction in an appeal which raised an issue under section 85(5) of the 2003 Act – see paragraphs 45 and 46 of the judgment of Pill LJ. The court at an earlier hearing had contemplated the admission of this material without objection at that stage. Technically evidence of foreign law is regarded as evidence of fact in this jurisdiction. But we doubt whether such evidence was a significant parliamentary concern underlying section 29(4). The court would naturally wish to be properly informed as to relevant legal principles of the law of a foreign state.
>
> 35. Even for defendants, the court will not readily admit fresh evidence which they should have adduced before the district judge and which is tendered to try to repair holes which should have been plugged before the district judge, simply because it has a Human Rights label attached to it. The threshold remains high. The court must still be satisfied that the evidence would have resulted in the judge deciding the relevant question differently, so that he would not have ordered the defendant's discharge. In short, the fresh evidence must be decisive."

20. *Fenyvesi* was recently considered by the Supreme Court in *Zabolotnyi v Mateszalka District Court, Hungary* [2021] 1 WLR 2569, [57]-[58]:

> "57. In my view these conditions in subsection 27(4) are, strictly, not concerned with the admissibility of evidence. I agree with the observation of Laws LJ in *District Court of Slupsk v Piotrowski* [2007] EWHC 933 (Admin), with regard to the parallel provision in section 29(4) which applies to an appeal against discharge at an extradition hearing, that it does not establish conditions for admitting the evidence but establishes conditions for allowing the appeal. In my view this applies equally to section 27(4) which is not a rule of admissibility but a rule of decision. The power to admit fresh evidence on appeal will be exercised as part of the inherent jurisdiction of the High Court to control its own procedure. The underlying policy will be whether it is in the interests of justice to do so (*Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin); [2009] 4 All ER 324, a decision in relation to section 29(4) of the 2003 Act, paras 4 and 6 per Sir Anthony May P; *FK v Germany* [2017] EWHC 2160 (Admin), para 26 per Hickinbottom LJ). In this context, however, an important consideration will be the policy

> underpinning sections 26-29 of the 2003 Act that extradition cases should be dealt with speedily and not delayed by attempts to introduce on appeal evidence which could and should have been relied upon below (*Fenyvesi* at paras 32-33)."
>
> 58. Parliament in enacting sections 26-29 of the 2003 Act clearly intended that the scope of any appeal should be narrowly confined. The condition in section 27(4)(b) that the fresh evidence would have resulted in the judge deciding the relevant question differently is particularly restrictive. This is reflected in the judgment of the Divisional Court in *Fenyvesi*…"

21. Section 21 of the EA 2003 requires the district judge to consider the human rights of the defendant.

22. Article 8 of the ECHR provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

23. The application of Article 8 in the extradition context is well-travelled ground. In *Norris v Government of the United States of America (No 2)* [2010] 2 AC 487 the Supreme Court held the correct approach was to consider whether the consequences of the interference with the Article 8 rights were 'exceptionally serious' so as to outweigh the importance of extradition. The Supreme Court also held that the person's family unit had to be considered as a whole when weighing whether the interference with Article 8 was proportionate.

24. The application of Article 8 was further considered in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338, in which the considerations for the court following *Norris* were outlined by Lady Hale at [8]:

> "8. We can, therefore, draw the following conclusions from *Norris*: (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in

> extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no "safe havens" to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private 363and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

25. The test on an appeal is whether the decision of the district judge was wrong in the sense explained by the Divisional Court in *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551, [19]-[25]. The Court said at [24]:

> "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."

26. A more recent expression of the appellate approach is to be found in the Divisional Court case of *Love v Government of the United States of America* [2018] 1 WLR 2889, in the judgment of Lord Burnett CJ at [25]-[26]. The court in *Love* was not considering an Article 8 case, but these *dicta* are plainly of wide application:

> "25. …The appeal must focus on error: what the judge *ought* to have decided differently, so as to mean that the appeal should be allowed. Extradition appeals are not rehearings of evidence or mere repeats of submissions as to how factors should be weighted; courts normally have to respect the findings of fact made by the district judge, especially if he has heard oral evidence. The true focus is not on establishing a judicial review type of error, as a key to opening up a decision so that the appellate court can undertake the whole evaluation afresh….

> 26. The true approach is more simply expressed by requiring the appellate court to decide whether the decision of the district judge was wrong…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 weighted so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed."

27. Whilst this is the general approach, where fresh evidence not before the district judge is relied upon on an appeal then the appellate court must make its own assessment based on all of the material: *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26], where Burnett LJ (as he then was) said:

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

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

Submissions

28. On behalf of the Appellant, Ms Brown accepted that the judge had been entitled to conclude that the Appellant was a fugitive, although she formally placed on record her client's disagreement with that finding. But, in any event, she said that the district judge was wrong in his overall conclusion on Article 8 for the following reasons.

29. First, she said that the judge had been wrong to say the money had not been paid back and referred to emails sent to Westminster Magistrates Court in December 2020, shortly before the judge gave his judgment, which she said proved repayment in full. The Appellant's intention to pay had been canvassed before the district judge in her addendum proof of evidence that was before him. Ms Brown did not criticise the district judge because she accepted the emails may only have come to the Court after his judgment had been written.

30. Next, Ms Brown emphasised that the Appellant had been unrepresented below and sought to rely on a new proof of evidence from May 2021 and an addendum from October 2021 (both prepared with the assistance of lawyers) drawing out her instructions and containing updated medical evidence, including about her husband's conditions. She said that I should admit this evidence pursuant to *Fenyvesi* and that it should cause me to reach a different conclusion on Article 8.

31. Ms Brown emphasised the following in particular taken from both the Appellant's evidence before the lower court and the fresh evidence on appeal as factors in her favour in the Article 8 balancing exercise: (a) the offending involved the loss of about £2000 to a company which had now been repaid, she having been unable to do so at the time; (b) the delay since the offending, which is now some 17 years; she said the judge appeared to hold the Appellant solely responsible for the delay when that was not the case; (c) the Appellant's health: she suffers from psoriasis and high blood pressure, and carpal tunnel syndrome. Her high blood pressure sometimes affects her ability to work and led her GP to nearly admit her to hospital for observation; (d) in relation to the Appellant's husband, she referred to updated evidence about his conditions including information from his GP dated July 2021, referring to his 'chronic' conditions, and also to the outcome of his appeal in April 2021 in relation to his application for a Personal Independence Payment (PIP) which also contained details of his conditions. He had a heart attack in 2015. His other health conditions include diabetes and a lack of hearing in one ear. As a result of those conditions the Appellant assists him with daily tasks such as dressing and washing. The Appellant assists with monitoring his medication and gives him insulin twice per day, which is administered by injection. Mr Klazinski is not able to walk more than approximately 50 metres. If the Appellant is extradited, her husband intends to stay in the UK due to his health conditions. Mr Klazinski has now been granted PIP, following an appeals process. Further, the Appellant details the ongoing issues with his mobility in her updating proof of evidence, 'my husband has since been given a blue badge however the issues with his leg continues to get worse. He has been referred to a podiatrist as he is losing feeling at the bottom of his feet and cannot feel his toes. His legs are constantly swollen, and walking is extremely painful for him'. Ms Brown therefore said that the evidential situation in respect of Mr Klazinski and the extent of the care that his children would be able to provide for him have moved on in several significant respects since the matter was before the district judge; (e) Ms Brown also said the judge's finding that the Appellant's daughter could provide assistance is now out of date: she lives in London (the Appellant and her husband live in Nottingham), and was due to give birth to her first child in November 2021. The assistance she could provide to her father - her ability to 'rally round' as the judge put it - would obviously therefore be limited. Similarly, their son is now in full-time work. Ms Brown also placed emphasis on the uncertainty whether, if extradited, the Appellant would be entitled to return to the UK; cf *Antochi v Germany* [2020] EWHC 3092 (Admin), [52]. She accepted, however, that the Appellant's husband has been granted settled status and her daughter holds a British passport, and that the Appellant herself had applied for settled status.

32. In reply, Ms Hollos on behalf of the Respondent submitted that the real focus of the appeal was on the Appellant's husband's health and the impact the Appellant's extradition would have upon him. She submitted that that impact would not be so serious or significant such as to result in the conclusion that extradition would violate Article 8, in light of the overall balance of factors identified by the district judge.

33. She accepted that the evidence upon which the Appellant now sought to rely was not available at the time of the extradition hearing because the Appellant did not have the benefit of legal representation at first instance. She therefore did not, in all the circumstances, object to its consideration by this Court. She made clear that position was premised upon the less strict approach to fresh evidence in human rights cases

referred to in *Fenyvesi*. However, she made clear the Respondent did not accept that the conditions in s 27(4)(b) or (c) of the EA 2003 were made out.

34. She said that the district judge considered and carefully weighed all of the evidence put before him in this matter and all of the relevant considerations. He committed no error of law and, in particular did make reference to the health of the Appellant and her husband; the position of the Appellant's adult children; neither of whom are dependents; the delay since the commission of the offences; and the nature of the offending and the Appellant's role.

35. She accepted that the underlying factual matrix has developed over the intervening period, the reasons underpinning the district judge's considerations remain intact and, continue to outweigh the factors against extradition.

36. She said the judge had rightly characterized the offence as serious and that the fact the monies were repaid at or about the time of the judgment did not fundamentally alter the gravity of the underlying offending. The Appellant was under an obligation to repay the monies within five years; she did not in fact do so until 10 years later prompted by the extradition proceedings. The Appellant had been living and working in Cyprus and the UK for a period of time and had not then paid back the funds, as the judge recorded at [41]-[42].

37. Regarding delay, Ms Hollos said that there had been no culpable delay by the Respondent. It only learnt of the Appellant's whereabout in February 2020 (as the further information made clear) and the EAW was issued promptly after that.

38. Regarding the Appellant's health, she pointed out that she was not too unwell to work and is the main breadwinner (as she told the district judge). It can be assumed that Poland would be able to provide appropriate health care. The Appellant's updating proof of evidence provides more detail about the impact of her conditions upon her, however, Ms Hollos said it does not materially add to the information that was before the District Judge and which he properly weighed in the Article 8 balancing exercise.

39. So far as Mr Klazinski's health is concerned, the district judge was aware of the state of his health and this formed part of his Article 8 assessment. She accepted that the fresh evidence provided by the Appellant provides additional detail as to the state of Mr Klazinski's health and the extent to which his ability to care for himself without the assistance of the Appellant may be impeded, but it did not show the requisite exceptional consequences so as to allow me to reach a different conclusion to the judge. She said the evidence (including the PIP decision and his grounds of appeal) shows he can care for himself (as he does when the Appellant is at work) by administering medication, driving a car (including changing its tyres), and preparing food (albeit he needs to sit down). She also noted that he had been encouraged to take more exercise, eg, by walking and swimming, in order to manage his diabetes, and that he is treated by a diabetic nurse. She noted he had not been awarded the mobility component of PIP.

40. Finally, she said that neither any suggested emotional impact on the Appellant's (adult) children, nor any Brexit uncertainty, could carry much weight in the balance in the circumstances of this case.

Discussion

41. I formally admit the evidence post-dating the hearing on which the Appellant wishes to rely. This includes the medical evidence served shortly before the hearing and that submitted by the Appellant's solicitor after the hearing, relating to the PIP appeal. In doing so, I should emphasise that the general position is that extradition defendants are expected to advance the whole of their case before the district judge, and I re-iterate what was said in *Fenyvesi* at [35] about the hurdle for introducing fresh evidence on appeal being a high one, even where human rights are engaged.

42. I agree with Ms Hollos that the real focus of this appeal is the effect extradition will have upon the Appellant's husband and whether that amounts to the sort of 'exceptionally severe' hardship referred to by Lady Hale in *HH*. I am not persuaded that any of the other matters relied upon by Ms Brown are sufficient, alone or in combination, to tip the balance.

43. So far as the Appellant's repayment of the compensation is concerned, whilst I accept this has now been done, this was a condition of her suspended sentence which she did not comply with. I do accept she was in financial difficulties and that was the primary reason she did not repay at the time. But defendants should not be able to buy their way out of extradition by fulfilling obligations like paying compensation which they were required to fulfil as a condition of their sentence. Paragraph 4 of her addendum proof of 14 December 2020 acknowledged that repaying the sum now would not alter matters in Poland, and indeed in May 2021 the Polish court refused to revoke the activation of her sentence, notwithstanding the repayment. She conceded that the date by which they money should have been repaid was April 2011. (I was told there was to be a new application for revocation in November 2021, but as at the date of this judgment I have not been told the outcome was any different.)

44. In relation to her own health, there is no reason to conclude that her relatively common conditions cannot properly be treated in Poland. The usual presumption of the sufficiency of medical treatment applies: *Kowalski v. Regional Court in Bielsko-Biala, Poland* [2017] EWHC 1044, [20]. If she is extradited her medical records from the UK should accompany her to Poland.

45. In relation to the passage of time, I accept that the offending is now some time ago, but two matters are pertinent: (a) there is no suggestion of any lack of diligence in prosecuting the case in Poland: the court judgment sentencing the Appellant was given in 2006 and thereafter the Appellant was regularly summonsed to court; (b) the Appellant is a fugitive and left Poland in 2011 in breach of her conditions. Although I accept that a fugitive is not de-barred from relying on the passage of time in an Article 8 argument in the same way that they are in relation to the s 14 bar to extradition, the weight to be attached to it must be significantly less, as Ms Hollos submitted. I also note that in 2006 the Appellant was imprisoned in Poland on a separate matter.

46. Neither the position of the Appellant's children nor Brexit uncertainty carry much weight, in my judgment, for essentially the reasons advanced by Ms Hollos. The children are adults and not dependent on the Appellant, and in any event family separation is a usual feature of extradition. Although the Appellant's application for settled status remains outstanding, she is virtually certain to be allowed back to the UK given her husband will be here and her daughter holds a British passport. I accept Ms

Brown's point that the position of the Appellant's son is not clear because he has been refused settled status.

47. Turning to the Appellant's husband's health, the Appellant describes it thus in her May 2021 proof of evidence prepared for this appeal at [20], [22]:

> "20. My husband has a lot of health complications. We have applied for and have been granted Personal Independence Payments by the Department of Work and Pensions as he has been 157 157 deemed by the authorities, to be suffering from a long term physical condition. I exhibit a copy of the appeal application and the Tribunal's judgment as JK/6. We have also applied for housing in the hope that we can move into a bungalow. Due to my husband's severe mobility issues, it is very difficult for him to manage the stairs in our home. I exhibit a copy of an email sent to Nottingham City Council in respect of this application as JK/7. He had heart attack almost 6 years ago. He is diabetic and on insulin. He also cannot hear in one ear. I have to assist him with every day tasks such as getting dressed and washing. I also do all cleaning and cooking. He doesn't have mobility problems as such but when he goes out can only walk for around 50 metres or so before needing rest. I have to prepare and monitor his medication and give him insulin injections twice a day. When I am at work my daughter will keep an eye on her phone just in case my husband needs anything/calls for an emergency if he needs medical help. If I am extradited my husband will stay here because of his medical needs. The hospitals in Poland are not as good as here.
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> …
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> 22. My extradition will have a huge impact on my husband. Although he now has some financial support by virtue of being granted PIP, it still does not compare to the level of financial support I currently give him and will not be enough for him to live off. He will be left without financial and day-to-day support; the level of care won't be as much as it is now, and he could have a nervous breakdown. I am not sure where he would live. My daughter will not be able to support him financially and pay for his expenses and bills and he cannot afford to support himself. My daughter lives in a one bedroom flat in London with her husband and they are planning family of their own, so my husband would not be able to live with them. Magdalena is currently 16 weeks pregnant and is due to have her 158 158 baby in November 2021. They would not be able to move to Nottingham as their jobs are in London. It would be very difficult for my husband and I to accept that his daughter has to support him financially and look after him practically even if she was able to do so. He would also not be able to return to Poland. We don't have a home there. We don't have family or friends who could help. We don't have any savings so he would

> require financial support as well. His health would worsen because the medical care is much worse there."

48. The First-tier Tribunal's PIP appeal decision from April 2021 (which, I accept from what the Appellant's solicitor said in her post-hearing statement, relates back to how Mr Klazinski was at the time of the Secretary of State's initial PIP refusal in July 2019 rather than the position in 2021), said he had limited ability to carry out activities of daily life, and that he needed assistance or to use an appliance in connection with various tasks like preparing food, taking medication, toileting and washing and bathing and doing up zips and the like. He was awarded a number of points and was awarded the daily living component at the standard rate (but not, as I have said, the mobility component).

49. The (very short) letter from the Appellant's husband's GP from July 2021 referred to his conditions as being chronic; that his mobility had got worse over the previous couple of years; that he and the Appellant were awaiting an occupational assessment for adaptations to their house; and that he relied on his wife for assistance with most activities of daily living 'throughout the day'.

50. Paragraph 6 of the Appellant's updating proof of evidence from October 2021 stated:

> "6. We have approached the council regarding an at home care assessment for my husband to see what adaptations can be made at home to help him move around. We also enquired to see what care would be available to him in the event that my removal takes place. We have also made enquiries regarding a bungalow to assist with my husband's mobility issues. Nottingham Council informed us that we must bid for this and that they would only be able to conduct a care assessment based on my husband's PIP award and universal credit. We have applied for universal credit to seek further financial support but again the Department for Work and Pensions cannot progress the application because they are unable to confirm whether I have settled status. I exhibit confirmation of this as JK/13. We do not know if this or any financial help would be available if I was extradited from the UK. My husband has also been given a blue badge as the issues with his legs continues to get worse. He has been referred to a physiotherapy as he is losing feeling at the bottom of his feet and cannot feel his toes. His legs are constantly swollen, and walking is extremely painful for him. He has now been contacted to arrange this appointment and I will provide a confirmation letter as soon as it is received. I exhibit a copy of the letter from his GP as JK/14."

51. Taking all matters together, like the district judge, I accept that the Appellant's extradition will have an effect upon her husband's daily life, and that this effect might be described as serious. That is because I accept that he is in poor health and that he consequently has difficulties in some daily tasks with which his wife assists him. But I have reached the conclusion that the consequences for him are not so severe that they satisfy the relevant test for disproportionality that I set out earlier, namely

'exceptionally severe' consequences which outweigh the factors in favour of extradition.

52. The starting point is that, in this case, there are a number of potent factors in favour of extradition. The district judge identified these. Chief amongst them is that the Appellant is a fugitive who knowingly left Poland in breach of the obligations she knew she had. The judge might have been strictly incorrect to say the compensation remained outstanding at the date of his judgment, but for the reasons I explained earlier, the fact that she belatedly paid it, and only did so on foot of these extradition proceedings, does not in my judgment carry much weight. That is particularly so when the Polish court, whose opinion must be given primacy, has declined to set aside her custodial sentence on that basis. The strong public interest in this country honouring its extradition obligations applies with particular force in relation to fugitives. The UK cannot become a safe haven for those who have knowingly placed themselves beyond the reach of the judicial systems of the countries whose criminal laws they have violated in order to avoid punishment.

53. In relation to the Appellant's husband, it is clear that he is able to manage by himself to a degree day-to-day, albeit his wife assists him when she is there. But she goes out to work (I was told by Ms Brown, she works eight hour shifts five days a week) and is the primary breadwinner, and it therefore follows there must be significant periods when her husband is by himself and has to cope. Although I do not for a moment underestimate the seriousness of his conditions, there are many people in this country who have to cope with the same, or worse, without a spouse or close family member to help them. They do so with the range of social and welfare services that are available in this country. There is nothing to suggest that these would not be available to the Appellant's husband were she to be extradited or that they would not adequately – if not necessarily perfectly – replace the care and assistance which she gives even given her absence at work. Ms Brown expressly accepted that it was not the case he could not be left by himself. He is plainly capable of caring for himself with assistance. The evidence I quoted earlier shows that he and his wife are able to access welfare services (eg by lodging a successful PIP appeal), and that they have taken steps to secure alterations to their accommodation. I also accept that there would be a financial impact if the Appellant were to be extradited but this is a common feature of extradition and, again, the welfare state would step in to support him. He would not become destitute. I accept that, unlike the position before the district judge, it cannot now be assumed that the Appellant's children would be available to assist him. But that does not alter the fact he would be properly supported by social services and the welfare state.

54. Taking all matters together, I am not satisfied, assessing matters for myself, that extradition would be a disproportionate interference with the Appellant's Article 8 rights.

Conclusion

55. It follows that, for these reasons, this appeal is dismissed.