



Neutral Citation Number: [2023] EWHC 2859 (Admin)

Case No: CO/4665/2022
AC- 2022-LON-003545

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 14th November 2023

Before:
FORDHAM J

Between:
SEBASTIAN KLOS **Appellant**
- and -
REGIONAL COURT IN WARSAW (POLAND) **Respondent**

Rebecca Hill (instructed by Taylor Rose MW Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 14/11/23
Judgment as delivered in open court at the hearing

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.

FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. The Appellant is aged 37 and is wanted for extradition to Poland. That is in conjunction with an Extradition Arrest Warrant issued on 19 August 2021 and certified on 10 October 2021. This is a conviction warrant and relates to an overall 4 year custodial sentence relating to a series of 12 offences of fraud and a 13th offence of using a false instrument, committed in Poland between August 2009 and September 2011. The Appellant was arrested on the Extradition Arrest Warrant on 12 January 2022 and has been on bail since then. Extradition was ordered by District Judge Callaway (“the Judge”) on 7 December 2022 after an oral hearing on 3 November 2022 at which the Appellant represented himself, and both he and his wife gave evidence.
2. At that stage the Appellant researched and compiled a vast volume of documents, to which the Judge referred. It is fair to say that Article 8 was not at the forefront of the points that he was seeking to advance. The sole issue which is now relied on, in support of the proposed appeal to this Court, is Article 8 private and family life. This relies on the Article 8 rights of the Appellant, his wife and their now three young children born in November 2017, January 2021 and August 2023 (and so now aged 5, 2½ and 3 months). As is obvious from the time-line, at the time of the hearing before the Judge the family was a family of four. The wife’s statement and oral evidence before the Judge had referred to the two children and to the oldest child being a daughter. Concerns were raised with the Judge about the impact of extradition and the Judge did specifically address Article 8 in a section at the end of his judgment. Successive applications to adduce fresh evidence have now been put forward: in February 2023 (opposed by the Respondent) and March 2023 (not opposed by the Respondent) and now in November 2023 (on which the Respondent is neutral).

Permission to Appeal

3. I am going to grant permission to appeal on the Article 8 argument in this case. There is now a third child who is very young and whose Convention rights and best interests need to be considered. The Judge plainly could not do so and cannot be criticised for not doing so. This is a classic case of a new development, and the law rightly retains the flexibility to be able to deal with an evolving picture. In the course of his judgment there are two references by the Judge to the Appellant and his wife having one child, and to that child being a son. There is also a reference at the end of the Judge’s judgment to matters falling far short of “the exceptionality test” which “this court is obliged to apply”. Yet, as the Judge had earlier and rightly recorded – by reference to HH v Italy 2012 UKSC 25 at §8 – there is no exceptionality test. It may be that what the Judge had later intended was to refer to the question of whether in this case there were “exceptionally severe consequences” (also HH at §8). The only question for today is whether the appeal is reasonably arguable. I am satisfied that this (modest) threshold is crossed by all the circumstances and features of the present case. In particular, I am satisfied that it is appropriate for this Court, at what I think it can be a relatively short substantive hearing, to check and confirm whether it is the case that extradition would be compatible with the Article 8 rights of all those who are impacted.

Fresh Evidence

4. So far as the fresh evidence is concerned, I think the appropriate course is to defer to the Judge dealing with the substantive hearing what order is made about that. Sometimes extradition courts arrive at the ultimate conclusion that the fresh evidence is incapable of being decisive which, strictly speaking, means it is not admissible. But it is obvious from what I have said that I consider it appropriate and indeed necessary that the materials that are before the Court should be considered at a substantive hearing. That is what will happen next in this case.

Fugitivity

5. That leaves one discrete topic which is worthy of mention. The Judge found the Appellant to be a fugitive on the basis, in particular, of June 2022 Further Information from the Respondent. This stated – amongst other things – that the Appellant had breached an obligation to notify the Polish court of a change of address, an obligation of which he had been informed before being officially advised of the charges against him. Ms Hill’s position is that that finding of fugitivity is capable of being undermined by fresh evidence (filed in February 2023) in the form of a June 2020 letter from the Polish Court to the Appellant’s Blackburn address, which shows that he must – as he claims – have informed the authorities of his whereabouts. I observe that, on the face of it, that letter is not inconsistent with the Further Information, which itself records that by March 2020 the Appellant had confirmed his UK residence. That was in the course of his pursuing the request for enforcement of his sentence to be delayed, a request which was denied and against which denial an appeal was dismissed in October 2020. The original sentence had been imposed back in April 2018. It may be against that backdrop that there is nothing in the challenge to the fugitivity finding. But I am not going to shut out the point. In the light of what I heard and have read I do not think it is justified to dismiss this aspect of the appeal as unarguable. I think it is a point which is worthy of ventilation and substantive consideration, as an aspect of the case arising under the Article 8 issue for which I am granting permission to appeal.

Conclusion

6. I will grant permission, defer the applications to adduce the fresh evidence, and make the usual directions for a substantive hearing in this case.

14.11.23