



Neutral Citation Number: [2024] EWHC 1003 (Admin)

Case No: AC-2023-LON-001791

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 May 2024

Before :

MR JUSTICE JOHNSON

Between :

FRANCO PADERI

Appellant

- and -

PROSECUTOR GENERAL COURT OF APPEAL
CAGUARI (ITALY)

Respondent

Rebecca Hill (instructed by Jettender Arora Saunders Solicitors) for the Appellant
Toby Cadman (instructed by Crown Prosecution Service Extradition Unit) for the Respondent

Hearing date: 25 April 2024

Approved Judgment

This judgment was handed down by release to The National Archives
on 2 May 2024 at 10.30am.

Mr Justice Johnson:

1. The appellant appeals against an order for his extradition to Italy. A striking feature of the case is that the underlying offences were committed more than 30 years ago, and the sentence (as varied on appeal) was imposed 17½ years ago. The appellant fled to the United Kingdom within days of that sentence becoming final. He says that the judge was wrong to order his extradition because that is a disproportionate interference with the right to respect for private and family life under article 8 of the European Convention on Human Rights (“the Convention”), having particular regard to the passage of time since he committed the offences.

The factual background

2. The appellant is 70 years old. The offences for which he was convicted concerned drug trafficking and firearms. They were committed when he was 34 years old:
 - (1) Between November 1987 and 16 March 1988 he was a member of an organised crime group that was involved in trafficking 1.7kg of heroin. He recovered payment for drugs that were received in Cagliari and sent the monies to Milan.
 - (2) On 16 February 1988 he possessed and supplied “drugs and psychotropic substances” in Cagliari.
 - (3) On 16 February 1988 in Cagliari he was in unauthorised possession of a Gamba revolver, a Smith & Weston revolver and related munition. The registration numbers had been scraped off the revolvers.
 - (4) On 16 February 1988 he unlawfully carried arms in Cagliari.
3. The appellant was arrested on 11 March 1989. He was remanded in custody until 6 December 1989, a period of 8 months and 27 days. He was then released. The matter did not reach trial for 10 years. There were hearings in 1999 which the appellant attended in person and a further hearing on 18 May 2000 which he attended by his lawyer, although he was not physically present. On 25 May 2000 there was a hearing which the appellant attended by the lawyer although, again, he was not physically present. He was sentenced to 11 years’ imprisonment. He appealed. On 21 September 2005 the appeal was allowed to the extent of the sentence being reduced to 9 years’ imprisonment. The appellant further appealed to the court of cassation, but his appeal was refused on 10 November 2006. Allowing for the time he had spent in custody, he had almost 8 years left to serve.
4. The appellant was, at this point, married with 2 sons.
5. Just 12 days after the dismissal of the appeal, the appellant left Italy on 22 November 2006 on a flight to London. On 4 December 2006 the court issued an arrest warrant for the appellant. The same day, the police in Italy entered “tracing orders” for him.
6. On 13 December 2006 the police notified the prosecutor that the execution of the appellant’s sentence could not be enforced because he had left Italy on 22 November 2006 on a flight to London. He has remained in the United Kingdom since then. He has

worked in his own name. He has not been convicted of any criminal offences in the United Kingdom.

7. In 2014 the appellant met his current partner. He has looked after his partner when she has suffered ill-health. She has a son who is now aged 39. The appellant has a good relationship with his partner's son and with the son's partner. The appellant's two grown-up sons both still live in Italy.
8. A European arrest warrant for the appellant was issued in November 2018.
9. In July 2022 the appellant filed an application for an Italian passport with the Italian Consulate in London. The arrest warrant was certified in September 2022. The appellant was arrested the same month and brought before the Westminster Magistrates' Court.

The reasons for the delays

1987 - 2006

10. The National Crime Agency sought further information from the respondent about the duration of the proceedings in Italy. The respondent provided the following further information:

“About the duration of the proceedings: The judgment against Franco Paderi for facts committed between 1987 and 1988 was prepared in the first phase under the code of 1930 (old rite); the procedural process was slowed down by the procedural objections proposed in view of the legislation relating to the rite. In the light of this, the length of the proceedings against the convicted person is explained.”

11. The appellant called expert evidence from an Italian lawyer, Sig Benito Capellupo. He only had access to limited documentation in the case, and he had not received anything from the lawyers who had represented the appellant. The appellant's lawyers did not see the report that Sig Capellupo produced. He accepted that without access to the original file, he was only able to speculate on what should have happened and that he was not able to say what actually did happen.
12. He explained that a new criminal code was implemented in Italy on 29 October 1989. That meant that the proceedings against the appellant had commenced under the old law but had then continued under the new law. The available documents did not show that there were any hearings before 1999, but he could not exclude the possibility that there had been earlier hearings. The appellant's lawyer had raised a constitutional issue as a result of the change of the criminal code. Such an issue is normally raised during trial, but it could have been raised earlier.

2006 - 2022

13. The appellant left Italy on 22 November 2006. That meant it was not possible to enforce the sentence without finding the appellant and securing the extradition. Since 2006, the appellant has been living openly in the United Kingdom and working in his own name.

There is no evidence of travel to Italy or him otherwise coming to the attention of the Italian authorities. The respondent provided the following information as to the steps taken to trace the appellant:

“Franco Paderi has been sought on the national territory for many years, but the searches were unsuccessful in that the person sought, as established afterwards, moved from one municipality to another and made himself untraceable until he relocated abroad. The searches in the Schengen area have always been unsuccessful until Paderi requested the issuing of the passport at the Italian Consulate in London.”

The decision of the judge

14. The appellant advanced different challenges to his extradition, but it is now only necessary to consider his complaint that extradition would not be compatible with the right to respect for private and family life under article 8 of the Convention. District Judge Griffiths rejected that objection, finding that extradition would be compatible with article 8 of the Convention.
15. The judge found that the appellant knew that he was liable to serve a sentence of imprisonment, that he had left Italy in order to avoid serving that sentence and that he was therefore a fugitive from justice.
16. She found that the appellant and his partner have a settled intention to remain in the United Kingdom, and that if he is extradited that would cause them emotional distress. She was satisfied that his partner would cope with the support of her adult son and his partner, as she had during the period of the appellant’s incarceration during the extradition proceedings.
17. The judge recognised that there had been “some considerable delay” which, she said, weighed in the appellant’s favour. She considered the delay in its entirety but analysed two distinct parts: the period between the offences in 1987/88 and the trial in 1999, and the delay between the point that the sentence became final in 2006 and the appellant’s arrest in 2022.
18. In respect of the first period, she said that the evidence of Sig Capellupo was limited and that much of his evidence involved some level of speculation which she considered had little value. As against that, the respondent had said that the passage of time was due to legal challenges brought by the appellant as a result of the change in the law. Sig Capellupo had conceded that such legal challenges would have been brought but was unable to give any detail about the consequence. The judge accepted the evidence of the respondent that this accounted for the delay. She considered that from 1999 the proceedings proceeded within usual timeframes, as Sig Capeullupo had conceded. Although the 10-year delay was “fairly lengthy”, the judge found that it was at least in part due to the challenges and appeals brought by the appellant.
19. The judge said that the second period was unexplained, other than the respondent explaining that searches that they carried out did not ascertain the appellant’s whereabouts until he applied for a passport. She could not, however, ignore the finding that the appellant was a fugitive who had left Italy in the full knowledge that he had an

immediate sentence of imprisonment to serve, and deliberately put himself beyond the reach of the respondent. She said that this reduced the impact of the delay.

20. The judge identified the factors that weighed in favour of, and against, an order for extradition. As to the former, she made reference to the strong public interest in the United Kingdom complying with its international extradition treaty obligations, the mutual confidence and respect that should be afforded to the respondent, the strong public interest in the United Kingdom not being a refuge for fugitives from justice, the seriousness of the underlying offending and the length of the sentence imposed. As to the latter, she made reference to the appellant's relationship with his partner and the impact that extradition would have, the fact that he had been working in the United Kingdom and that he had no convictions or cautions in the United Kingdom, and the considerable delay which she considered weighed in the appellant's favour.
21. The judge considered the balance to be struck between these competing factors. She concluded that extradition was compatible with the Convention:

“Having carried out the balancing exercise, in particular the impact of extradition upon the RP and his partner of emotional distress and some financial hardship, notwithstanding the considerable delay in this case and his good character in the UK, given the serious nature of these offences and the RP's fugitive status, I cannot conclude that the high public interest in extradition is outweighed by the other factors in this case. It would not be incompatible with her Convention rights nor disproportionate to extradite the RP in this case.”

The legal framework

22. Article 8 of the Convention states:

“Right to respect for private and family life

- 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 judge was required to decide if the appellant's extradition would be compatible with rights under article 8 of the Convention: section 21(1) of the 2003 Act (read with sections 10(2), 10(4), 11(1), 11(2), 20(1) and 20(2)). If she decided that it was not so compatible, she was required to discharge the appellant: section 21(2). Otherwise, she was required to order his extradition: section 21(3).

24. Extradition is incompatible with article 8 of the Convention if it amounts to a disproportionate interference with the right to respect for private and family life. In order to decide whether an interference is disproportionate it is necessary to determine whether the factors that militate in favour of extradition outweigh those that militate against. The approach to be taken is explained in *Norris v United States* [2010] UKSC 9; [2010] 2 AC 487, *R (HH) v Westminster City Magistrates' Court* [2012] UKSC 25; [2013] 1 AC 338 and *Polish Judicial Authorities v Celinski and others* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551. These authorities show that:
- (1) There is a very high public interest in ensuring extradition arrangements are honoured: *Celinski* at [9].
 - (2) That public interest always carries great weight, but the precise weight to be attached varies according to the nature and seriousness of the crimes involved: *HH* at [8].
 - (3) The public interest in the United Kingdom not being seen as a state willing to accept fugitives from justice is also very high: *Celinski* at [9].
 - (4) The decisions of a judicial authority of a Member State of the European Union must be accorded a proper degree of mutual confidence and respect: *Celinski* at [10].
 - (5) Cases (like *HH*) which involve the interests of children must be read in that context: *Celinski* at [8].
 - (6) It should be borne in mind that mitigation will have been taken into account by the court in the requesting state when sentencing the requested person: *Celinski* at [12].
 - (7) The judge at the extradition hearing is unlikely to have the same detailed knowledge of the proceedings as the sentencing judge: *Celinski* at [13].
 - (8) A judge considering extradition must set out her findings of fact and must provide adequate reasons for the conclusion reached when balancing competing considerations: *Celinski* at [15].
 - (9) This requires the judge to set out the factors that weigh in favour of, and against, extradition being ordered: *Celinski* at [16].
 - (10) It is not helpful to cite authority as to the way in which the article 8 balance has been struck on the facts of different cases: *Celinski* at [14].

Passage of time

25. Passage of time is capable of impacting on the article 8 balance in different ways. Private and family life is not static. It evolves with time. A person's private and family life might develop and strengthen during a period of delay so as to impact on the balance that is to be struck under article 8 of the Convention. Further, the passage of time may impact on the weight to be given to the public interest in favour of extradition. Where there will be a re-trial following extradition, any risk of unfairness may also be relevant to the public interest in favour of extradition and hence the article 8 balance. Thus, the passage of time can be a relevant consideration in the article 8 balance: *HH* at [6] and [8]; *Konecny v District Court in Brno-Venkov* [2019] UKSC 8; [2019] 1 WLR 1586 *per*

Lord Lloyd-Jones at [57]. The passage of time to be taken into account may include both the period between the sentence being imposed and the extradition request being made, and also the period of time taken from the commission of the offence to the conclusion of the criminal proceedings (including any appeal): *Konecny* at [57].

26. In *Konecny* the appellant committed offences of fraud in 2004 and 2005. He was convicted in his absence in 2008. An arrest warrant was issued in 2013 but not certified by the National Crime Agency until 2017. In the meantime, the appellant had worked as a lorry driver in the United Kingdom since 2008, and there was no evidence that he was aware of the proceedings. His partner had suffered a workplace accident in 2012 which had impaired her ability to work. The judge took account of the entire passage of time and observed that the delay since the offences were committed could both diminish the weight to be attached to the public interest in extradition and could also increase the impact of extradition on private and family life. There was no explanation for the considerable delay in finding the appellant. Nevertheless, even after taking account of the delay, the judge concluded public interest factors in favour of extradition outweighed his family and private life considerations. On appeal, Sir Wyn Williams said that he might have been more troubled by the delay than the district judge, but he was unable to say that the judge was wrong to conclude that extradition was compatible with article 8. On a second appeal to the Supreme Court, Lord Lloyd-Jones (with whom all other members of the court agreed) indicated that he too might have been more troubled by the delay than the judge, but he was unable to say that the judge was wrong.

Appeal

27. There is a right of appeal against an extradition order with the leave of the High Court: section 26.
28. On such an appeal (and so far as is relevant to this case), the court may allow the appeal only if the judge ought to have decided a question before her at the extradition hearing differently with the result that she would have been required to order the appellant's discharge: section 27(3) of the 2003 Act.
29. The determination of whether extradition is a disproportionate interference with rights under article 8 of the Convention involves an evaluative assessment. There are some cases where different judges, correctly applying the law, may permissibly reach different conclusions. The role of the appellate court is not to substitute its own evaluative assessment for that of the judge. Its role is to determine, in accordance with section 27(3) of the 2003 Act, whether the judge's decision is wrong. The fact that an appellant court might have doubts about the judge's conclusion, or might have reached a different conclusion, does not, in itself, mean that the judge's conclusion is wrong: *Celinski* at [19] – [24].

Submissions

30. The appellant appeals on the ground that the judge was wrong to conclude that extradition is compatible with the rights of the appellant and his family to respect for their private and family life under article 8 of the Convention. His case is that the judge was wrong to conclude that his extradition is a proportionate interference with their article 8 rights.

31. Rebecca Hill, on behalf of the appellant, puts at the forefront of her submissions the stark fact that the offending took place some 36 years ago. She says that makes this case wholly exceptional on its facts, and that to extradite a 70-year-old man for offences committed in his thirties is not a proportionate interference with his article 8 rights. She makes no complaint about the judge's identification of factors that weighed in favour of extradition. Her complaint is that the judge failed to accord sufficient weight to the wholly exceptional delay and its impact on the balancing exercise and, particularly, the public interest in favour of extradition.
32. She says the judge should have found that there was no explanation for the 17 years from the commission of the offences until the sentence became final. The respondent's assertion that the appellant had challenged the legal basis for the prosecution could (particularly in the light of the expert evidence) only account for the period from 1999 when court hearings took place. There is nothing on the papers or from the respondent to suggest that these challenges were litigated between 1989 and 1999. That period was inexplicable and amounted to culpable delay on the part of the respondent. So too was the period of 7 years between the appellant's conviction and the final resolution of the appeal.
33. Further, the judge failed to refer to the jurisprudence on the relevance of delay in an article 8 case, and made no reference to the decisions in *Rybak v Poland* [2021] EWHC 712 (Admin); [2021] 1 WLR 3393 or *Lysiak v District Court Torun, Poland* [2015] EWHC 3098 (Admin) where the court had refused to order extradition on the grounds of delays which were much less extensive than those in the present case.
34. The judge also failed to take account of the fact that the appellant had, at the time of the hearing, served 1 year and 8 months of the sentence (now 2 years and 8 months), so if he were to be discharged he would not escape with impunity – he would still have been subject to a significant punishment for offences committed more than 30 years ago.
35. Toby Cadman, on behalf of the respondent, says there was no requirement for the judge to refer to *Rybak* or *Lysiak*. He referred to a wealth of caselaw to support the proposition that it is unhelpful to refer to caselaw on whether extradition is a disproportionate interference with rights under article 8 of the Convention.
36. He says that Sig Capellupo had fairly recognised that there had been a fundamental shift in criminal procedure, and that the resultant legal challenges had caused delay in many cases. He accepted that his evidence involved a degree of speculation and he had accepted that the change in criminal procedure, and consequential constitutional challenges, may have had an impact on the period of time from the commission of the offences to the resolution of the criminal proceedings. The judge was therefore right to conclude that there was nothing to contradict the position put forward by the respondent as to the reasons for the delay.
37. As to the delays after the appellant came to the United Kingdom, there was no evidence that he had been registered in the United Kingdom until 15 years later when he applied for a passport. Throughout that period, he was a fugitive.
38. The judge had taken the delay into account when carrying out the balancing exercise. She took account of the fact that not all of the delay had been explained, and she treated that as a factor in the balancing exercise as reducing the public interest in favour of

extradition. She had taken the correct approach to assessing whether extradition was compatible with Convention rights, and she made decisions that she was entitled to make.

Discussion

39. It is not necessary or helpful to compare the facts of this case with those of other cases: *Celenski* at [14(iii)]. An article 8 balancing exercise in this type of context depends on a careful analysis of the facts of the particular case (which is what the judge did), rather than the adoption of assessments made on the facts of quite different cases. The decisions in *Rybak* and *Lysiak* do not involve the development of any additional principle beyond those distilled by the Supreme Court in *HH*. There was no reason for the judge to cite either *Rybak* or *Lysiak* or to seek to draw comparisons or distinctions between the facts of those cases and the appellant's case. Insofar as extradition was refused in those cases that was for reasons that do not read across to the present case. In *Rybak* the requested person was only 18 at the time of the offences, he had served two thirds of his sentence, he had come to the United Kingdom with the permission of his probation officers and he had a young family. In *Lysiak* the requested person was not a fugitive and did not bear any responsibility for the delays.
40. The judge's job was to make findings as to the facts of the present case, to identify the factors that weighted in favour of or against extradition, and to make an assessment as to whether extradition would amount to a disproportionate interference with rights to respect for private and family life. That is exactly what the judge did. There is nothing in her judgment to indicate that she did not apply the correct principles.
41. It is not in dispute that extradition would amount to an interference with the appellant's private and family life. The judge proceeded on that basis. He has been in the United Kingdom for 17½ years and has been in a stable relationship with his partner (who is to some extent reliant on him) for 10 years. That relationship, and the appellant's life in the United Kingdom, was generated during a period when the appellant was a fugitive from justice and knew that he was required to serve a lengthy sentence of imprisonment in Italy. The appellant's private and family life in the United Kingdom was therefore built on a fragile and vulnerable foundation. There are no children of the relationship, and no other children who are dependent on the appellant. His adult children live in Italy. There is no challenge to the judge's finding that the appellant's partner would be able to cope with his extradition, with the support of her son and his partner. Nor is there any challenge to the list of factors that the judge identified as weighing against extradition. Nor is there any criticism of the weight that the judge allocated to the appellant's private and family life.
42. Nor is there any challenge to the factors that the judge identified as weighing in favour of extradition, particularly the public interest in honouring extradition arrangements and not permitting fugitives from justice to seek refuge in the United Kingdom. The challenge that is made concerns the impact of the passage of time on the article 8 balancing exercise.
43. The judge carefully assessed the passage of time and its impact on the article 8 balancing exercise. She was right to say that the overall period could be split into two discrete parts (whilst not losing sight of the total period of time that has passed). The authorities show that the first period is logically capable of impacting on the article 8

balance. In this case, however, the scope for such an impact is limited. None of the private and family life on which the appellant relies was generated during that period. The appellant's extradition is sought to serve a sentence that was imposed after this period of time. Delays in prosecution might, in some cases, be taken as an indicator that a requesting state did not attach the greatest importance to a particular case, which might in turn impact on the public interest in favour of extradition. Here, however, the offences were self-evidently serious, involving organised crime, firearms, and class A drugs, and giving rise to obvious public protection concerns.

44. Further, the judge carefully analysed the evidence as to the reasons for the period of time that had passed. She was entitled to accept the evidence of the respondent that the first period was due to legal challenges brought by the appellant. There was no evidence from the appellant, or his Italian lawyer, to undermine that account. The evidence of Sig Capellupo shows that the respondent's explanation is plausible. Insofar as Sig Capellupo's evidence suggests that the legal challenges might only have started in 1999, he accepts that is based on speculation. It follows that this first passage of time did not have a significant impact in the appellant's favour in the article 8 balance.
45. In respect of the period from 1999 to 2006, Sig Capellupo did not consider that there was any significant delay in the trial process. The period that followed that appellant's conviction was taken up with his successive appeals against sentence.
46. The judge fully took into account the fact that there was only a limited explanation from the respondent for the delay since 2006, and that the delay was "concerning". She was right to take this into account in the appellant's favour in the article 8 balance. However, the primary cause of the delay since 2006 is the appellant's decision to flee Italy in order to avoid serving his sentence. Some steps had been taken to try and trace him (the Schengen searches) and once the appellant applied for a passport steps were taken to secure his extradition. The judge was right to conclude that the appellant's fugitive status reduces the impact of the delay.
47. The judge cannot be criticised for not placing great weight on the time that the appellant had spent in custody. That period was spent on remand in the 1980s, or on remand pending these proceedings. The aggregate period that has been served is a small proportion of the sentence that was imposed, and a substantial period of time remains to be served.
48. Although the period of time that has passed is stark, the judge fully took it into account and carefully analysed the impact on the article 8 balance. She did so in a way that does not involve any legal error. It is possible that another judge might have reached a different conclusion about where the ultimate balance lay, but it has not been shown that the judge's conclusion was wrong.

Outcome

49. I uphold the decision of the judge to order the appellant's extradition and dismiss the appeal.