



Neutral Citation Number: [2024] EWHC 1457 (Admin)

Case No: AC-2023-LON-003820

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

Thursday 13<sup>th</sup> June 2024

**Before:**  
**FORDHAM J**

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**Between:**  
**NORBERT MIERNIK** **Appellant**  
**- and -**  
**SAD OKREGOWY III CRIMINAL DIVISION IN** **Respondent**  
**KIELCE, POLAND**

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**Wojciech M Andrew Zalewski** (instructed by AM International Solicitors) for the **Appellant**  
The **Respondent** did not appear and was not represented

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Hearing date: 13.6.24

Judgment as delivered in open court at the hearing

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**Approved Judgment**

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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 35 and is wanted for extradition to Poland. That is in conjunction with a conviction Extradition Arrest Warrant issued on 27 April 2022 and certified on 8 June 2022 on which he was arrested on 11 November 2022 and then released on bail the next day. Extradition was ordered by District Judge Zani (“the Judge”) on 18 December 2023 after an oral hearing on 27 March 2023 which resumed on 28 November 2023 (these was an issue as to re-translation of the Extradition Arrest Warrant). The index offence is a fraud committed (aged 28) on 22 December 2016, in respect of which a 6 month custodial sentence was imposed, all of which remains to be served. It is not unfair to say that the case advanced has shifted.

### Article 8

2. The one constant has been an argument on Article 8 ECHR. But it is not a viable ground of resistance to extradition. The Judge’s finding that the Appellant left Poland as a fugitive is unassailable, in circumstances where he knew of the criminal proceedings against him, was unimpeachably found to have attended a 11 July 2019 trial hearing as a defendant, and to have been notified of his duty to communicate any change of address, and having failed to notify the relevant authorities as required. Reliance on obtaining a March 2021 passport cannot assist. The Judge recognised the relevant factors in the Article 8 balance sheet including private and family life with a partner, and the lack of any convictions in the UK, but unassailably recognised that the strong public interest considerations in favour of extradition decisively outweighed those capable of weighing against it.

### Section 10

3. The Perfected Grounds of Appeal (9.1.24) sought to introduce a new ground of appeal relating to dual criminality and section 10 of the Extradition Act 2003. Two points were made. The first, emphasised orally today, is that the Judge did not discharge the mandatory duty of formally recording a determination as to section 10 and dual criminality. The second is that it is reasonably arguable that dual criminality is not present, essentially because of the possibility that signing a document as a delivery driver as agent for the delivery company would not be a crime in England and Wales but could fall within the Polish crime of fraud alleged in this case. The answer is this. The alleged crime is clearly set out as making a false instrument by forging a proof of payment. It is perfectly clear that that allegation of forgery involves dishonesty. The Judge described the task, and posed the right question, and described the index offence of forgery. He did not spell out the joining of the dots, but the position is clear, as is the outcome on any appeal.

### Section 20

4. By an application (10.6.24) on the eve of the renewal hearing, the Appellant’s representatives have sought to resurrect a ground of appeal which was purportedly “reserved” – but not advanced – in the Perfected Grounds of Appeal. The Court has been ‘drip-fed’ with very late materials, after the deadline for a skeleton argument

(6.6.24). The main explanation offered is that the Supreme Court decided Bertino [2024] UKSC 9 on 6 March 2024, and reliance is placed on various passages.

5. It really comes to this. The papers refer to a trial hearing on 11 July 2019 at which the Appellant was present, and to subsequent hearings on 8 August 2019 and 14 November 2019 (an appeal), at which he was not present. All of this is seen in the Extradition Arrest Warrant and in the further information dated 6 November 2023. There is said to be a gap as to s.20 deliberate absence, and reliance is placed on Tupikas (CJEU 10.8.17) and the relevance of appeal hearings. It is said that the law on fault and diligence has moved on, in Bertino. Reliance is placed on the boxes ticked and not ticked in the Extradition Arrest Warrant.
6. In my judgment, this goes nowhere. First, the Judge made an unassailable finding that the Appellant had been “properly summonsed” to appear at the August 2019 hearing, relying on – and earlier setting out – the Further Information which spelled out that he was summonsed for the appeal hearing in precisely the same way. Secondly, and in any event, the Judge found that the Appellant was represented by legal aid counsel at the July 2019 hearing (and the Appellant’s own evidence describes the court-appointed solicitor “who represented me”) – cf. Bertino §33 – and the same Further Information importantly records that his counsel then represented him at the August and November hearings (see Bertino §26iii). All of this was clear, as were the relevant authorities and principles, when the Perfected Grounds of Appeal advanced no section 20 argument. It is not a question of fault and diligence (Bertino §56). In the circumstances, I have not needed to defer for the Respondent to make submissions on the late new s.20 ground.

### Conclusion

7. This appeal has no realistic prospect of success on any of the grounds, old or new, and I will refuse permission to appeal.