

Neutral Citation Number: [2024] EWHC 2933 (Admin)

Case No: AC-2023-LON-002927

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19<sup>th</sup> November 2024

Before :

**MRS JUSTICE CUTTS DBE**

Between :

**JANUSZ ZIMER**  
**- and -**  
**REGIONAL COURT IN SZCZECIN, POLAND**

**Appellant**

**Respondent**

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**Ania Grudzinska** (instructed by **Guernica Chambers**) for the **Appellant**  
**Lucia Brieskova** (instructed by **Guernica Chambers**) for the **Respondent**

Hearing dates: 6<sup>th</sup> November 2024  
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**The Honourable Mrs Justice Cutts DBE :**

**Introduction**

1. This is an appeal against a decision of District Judge Cieciora made on 27 September 2023 to order the appellant’s extradition to Poland. His extradition was sought pursuant to an arrest warrant (the “AW”) issued by the Regional Court in Szczecin, Poland issued on 24 November 2022 and certified by the National Crime Agency on 22 January 2023.
  
2. The AW is a conviction warrant based on a decision of 27 October 2020 reversing the judgment of the District Court in Mysliborz dated 22 January 2019 issued for the appellant to serve a sentence of 18 months imprisonment for an offence described in box E as follows:

*“ The sentenced person, Janusz Zimer, in the period from at least December 2016 to 5 March 2017, in Berlin and Mysliborz, persistently harassed the victim, in such a manner that he insulted the victim with words commonly known to be offensive, controlled her, called her or sent messages to her day and night, forbade her from contacting other persons, persecuted her and checked messages received by the victim via Messenger and Viber and also, while pretending to be the victim, he replied to certain messages, sent her humiliating text messages, threatened her with publishing her naked pictures and throwing acid on her face, ridiculed her and humiliated her, thereby causing in the victim, justified by the circumstances, a feeling of insecurity and significant violation of her privacy. Furthermore, on 5 March 2017, against*

*the will of the victim, he publicly disseminated her naked pictures through posting them on Facebook.”*

3. Box F of the AW states that the appellant appeared at his trial in Mysliborz in 2018 and was represented by a lawyer. He did not appear before the Regional Court in Szczecin on 27 October 2020 despite being notified of the date. He was legally represented at that hearing. His lawyer confirmed he was aware of the date. The Regional Court in Szczecin reversed the decision of the District Court in Mysliborz (dated 22 January 2019), reduced the sentence from 2 years to 18 months’ imprisonment and annulled the part of the judgment on punitive damages in favour of the victim. The appellant failed to report to the prison and could not be brought in by the police. Information was received that he was staying in the United Kingdom.
4. Further Information confirmed that the victim was a Polish citizen with a permanent place of residence at an address in Poland.
5. The sole ground of appeal is that the District Judge was wrong to find that extradition was compatible with section 10 of the Extradition Act. (“the Act”.) In summary the appellant submits that during the relevant time the victim was living in Berlin and the appellant in the United Kingdom. The Judicial Authority is not able to prove to the criminal standard that the offence took place in the category 1 territory of Poland, as required by section 65(3)(a) of the Act.
6. The appellant has been refused permission to advance a ground of appeal that extradition would contravene his Article 8 rights.

### **The application to adduce fresh evidence**

7. At the start of the hearing Miss Grudzinska applied on behalf of the appellant to adduce fresh evidence. There are three written applications:
- i) The first is dated the 15 November 2023 and comprised a number of documents described as “the appellant’s proof of evidence dated 14 October 2023, statement of Malgorzata Zimer of the same date, Pre-settled status document, discharge summary and screen shot of transfer of money for the appellant’s father”. The appellant initially sought to rely on this evidence in support of his Article 8 ground of appeal for which he was refused permission. In summary the documents show that the appellant came to the United Kingdom in 2010 with his family, has lived at his current address since 2014/2015 and has had pre-settled status since 23 February 2021. He was discharged from hospital in November 2023 following investigations and treatment and sent money to his father on 12 September 2023. None of this is in dispute.
  - ii) The second is dated 20 December 2023. It relates to a further proof of evidence from the appellant dated 18 December 2023 and provides payslips for him in 2018. This is in response to an assertion by the respondent that the appellant stood for election as a candidate for the District Council of Mysliborz on 21 October 2018. In summary the appellant asserts that his name was put forward for election by a friend even though he said he did not want to be involved. The payslips are for various dates throughout 2018. The respondent has not sought to rely on the assertion that the appellant stood for election in Mysliborz during this appeal.

- iii) The third is dated 25 March 2024. It concerns a further proof of evidence from the appellant dated 21 March 2024 and a copy of a document from the Schoneberg District Family Court dated 13 April 2015 dissolving the marriage of the victim. In his witness statement the appellant states that he had this document in his possession at the time of the extradition hearing but did not place it before the District Judge because he relied on other documents, including decisions from the Polish Court from which it was clear that the victim was living in Berlin at the time of the offence. He did not think he should produce further evidence to prove it.
8. The well-known test for the admission of fresh evidence is set out in *Szombathely City Council v Fenyvesi* [2009] EWHC 231 (Admin). It is for the appellant to show that the evidence must have been unavailable in the court below with reasonable diligence and that, if the evidence had been adduced, the result would have been different, resulting in the person's discharge.
9. In support of the application, Miss Grudzinska points out that the appellant was unrepresented at the court below having only the assistance of a Mackenzie Friend. This placed him at a disadvantage in terms of his ability to prepare his case to the requisite standard. Whilst section 10 of the Act was raised all that appears to have been submitted on the appellant's behalf was that "there is no equivalent offence under English law". Section 65 of the Act was not properly considered at the court below. The significance of where the appellant and victim were living at the time of the commission of the offence was not properly explored on the appellant's behalf in the context of the section 10 argument. Section 10 is a technical bar which the appellant could not have been expected

to properly argue himself and it is submitted that the Mackenzie Friend did not assist. The appellant cannot be blamed for that.

10. Miss Grudzinska further submits that all of the documents are relevant and decisive in respect of the section 10 argument as they show that the appellant has lived with his family in the United Kingdom since 2010, working here and living at the same address throughout that time. The fresh evidence sought to be adduced by application of 20 December 2023 was in response to an issue raised after the hearing below by the respondent. The third application was made following the decision of the single judge refusing permission to appeal.
11. Miss Brieskova, on behalf of the respondent, objects to the admission of these documents. She accepts that the appellant was not represented at the hearing but submits that none of the evidence sought to be adduced would satisfy the test of being decisive on the issue of sections 10 and 65 of the Act. In respect of each application she submits:
  - i) The documents contained in the application of 15 November 2023 primarily relate to an initial ground of appeal regarding Article 8 of the ECHR. Permission to appeal on this ground was refused at the renewal hearing on 5 July 2024.
  - ii) She accepted that the second application related to an assertion contained in the Respondents Notice of 29 November 2023 and relates to the appellant's claim of being in the United Kingdom in 2018. The respondent no longer relies on this assertion in this appeal.

iii) The appellant himself accepts that he had the document relating to the victim's divorce at the time of the hearing but chose not to deploy it. It takes the case no further as it only shows that the victim had an address in Berlin in 2015.

12. I have considered this evidence de bene esse.

### **Judgment of the District Judge**

13. As already stated, the appellant was unrepresented at the court below although he had the assistance of a Mackenzie Friend.

14. As set out by the District Judge at [37(h)] the Statement of Issues included an assertion that "*a substantial measure of the Requested Person's activity has taken place in the UK. The Requested Person asserted that for most of the time specified in the charge (December 2016 – March 2017) he was living in the UK.*" The District Judge recorded one of the grounds of challenge to extradition as section 10 of the Act – that the offences are not extradition offences within the meaning of sections 10 and section 65 of the 2003 Act.

15. The District Judge summarised the evidence given by the appellant at [38] which included that he had come to the United Kingdom in 2010 and lived with his family here thereafter. He produced a document dated 3 February 2021 containing the decision of the court in Poland to refuse his application to serve his sentence in the "electronic supervision system" which said that the court was aware that he resided permanently abroad. The document further recorded that he regretted committing the act. A further document, dated 23 May 2022, from the court in Poland recording the court's refusal of a renewed application to

serve his sentence under electronic supervision again stated that the appellant had been staying abroad for many years.

16. The judgment records that the appellant produced a defence statement for the hearing dated 23 July 2023. Although the District Judge did not make reference to the following in her judgment this document contained the assertion that *“This should not be extradition case as there was no public interest in case as even victim did not die in Poland but in Berlin when at the same time I was not in Berlin I was on holiday in Poland for a week visiting my parents and on a boat trip with my friends.”* This is of relevance to the appeal as it is known that the victim committed suicide in Germany on 5 March 2017. The warrant records that it was on this day that the appellant posted naked photographs of the victim on Facebook against her will.
17. The District Judge did not find the appellant to be a fugitive. She found that he had been living in the United Kingdom since 2010 and there was no evidence as to when he left Poland.
18. Concerning section 10 of the Act, the District Judge recorded that the Judicial Authority submitted that the conduct in Poland would be contrary to section 76 of the Serious Crime Act 2015 and the conduct in Germany contrary to s.76A (given that the victim was a Polish national). The District Judge so found.
19. The District Judge went on to say at [70] that in respect of the conduct which took place in Poland this met the requirements of section 65(3) of the Act, namely that the conduct occurred in the category 1 territory, the conduct would constitute an offence under the law of the United Kingdom if it occurred in the



United Kingdom, and a sentence for a term greater than 4 months imprisonment was imposed.

20. At [71] she said of the conduct which took place in Berlin, that this met the requirements of section 65(4) of the Act, namely the conduct occurred outside the category 1 territory, in corresponding circumstances equivalent conduct would constitute an extraterritorial offence under the law of the relevant part of the United Kingdom and a sentence for a term greater than 4 months imprisonment was imposed.
21. It is common ground that the judge was wrong to find as she did in relation to the conduct in Berlin. Section 76A of the Serious Crime Act 2015, which relates to offences under section 76 committed outside the United Kingdom, was not in force at the time of the conduct in Berlin. Section 65(4) does not therefore apply in this case and the appellant could not be lawfully extradited for any conduct which occurred in Berlin when he was not in Poland. He could only be lawfully extradited to Poland on this warrant if the conduct occurred in Poland.

### **The legal framework**

22. By section 10 of the Act the judge at an extradition hearing must decide whether the offence specified in the Part 1 warrant is an extradition offence. If the judge decides that question in the negative she must order the person's discharge. It is for the Judicial Authority to prove that the offence is an extradition offence to the criminal standard.
23. Section 65 sets out whether a person's conduct constitutes an "extradition offence". Subsection (3) is of relevance to this appeal and provides:

*“ The conditions in this subsection are that –*

*(a) the conduct occurs in the category 1 territory;*

*(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;*

*(c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.”*

24. It is again for the Judicial Authority to prove to the criminal standard that this section is satisfied.

25. There is no dispute in this case that if the conduct occurred in the category 1 territory it would be an extradition offence.

26. In *King’s Prosecutor (Brussels) v Cando Armas* [2005] UKHL 67 Lord Bingham of Cornhill accepted at [16] that “conduct” in section 65 means the conduct complained of or relied upon in the warrant. At [17] he said:

*“ I cannot, however, accept that subsection (3) is to be read as requiring that all of the conduct complained of should have occurred in the category 1 territory. The subsection does not so provide, and the qualification that no part of the conduct should have occurred in the United Kingdom, expressly stipulated in subsections (2)(a), (5)(a) and (6)(a) is not found in (3)(a). It must be inferred that that qualification was not intended. It is enough, under subsection (3)(a), if some of the conduct complained of or relied on occurred in the category 1 territory.”*

27. At [35] Lord Hope of Craighead stated that it is now well established that the physical presence of the defendant in the territory is not required so long as the effects of his actions were intentionally felt there. The test of whether conduct occurs in the category 1 territory is satisfied for section 65(3) so long as its effects were intentionally felt there, irrespective of where the person was when he did the acts which constituted such conduct.
28. In *R (Birmingham) v Director of the Serious Fraud Office* [2007] QB 727 at [84] the Divisional Court interpreted Lord Hope's reference to "intended effect" as looking to the particular case where the defendant's acts, having taken place elsewhere, can *only* qualify as amounting to the category 1 territory on the footing that that was the place where their malign effects were felt. Where the defendant's acts – the relevant conduct – substantially took place in the category 1 territory as well as elsewhere, there is no need to resort to such a purposive approach.

## **Submissions**

### ***Appellant***

29. Miss Grudzinska submits that the Judicial Authority cannot prove to the criminal standard that the conduct in this case took place in Poland. She submits that the evidence shows that the course of conduct took place in Berlin. At the very least there is uncertainty as to where it occurred.
30. In this regard she relies on a document entitled "Justification of the Judgment of 22 January 2019" which was in evidence before the District Judge. This document in the first paragraph says that the victim lived alone in Berlin with her three children following her divorce. She renewed her acquaintance with

the appellant “who lived in Myyliborz” who was married with a wife abroad. She met with him at her parents’ house in Giyyno when she visited them and at home in Berlin where the appellant went at least once per month. There are references in the judgment to other witnesses confirming that the appellant would visit the victim in Berlin and also when she visited her parents. The judgment further mentions that on 5 March 2017 the appellant sent the victim offensive messages and published a naked photograph of her on Facebook.

31. It is submitted that it appears that most of the relationship between the two was based on contact through messaging with the appellant visiting the victim in Berlin. The conduct must therefore have taken place there. The victim was not living in Poland and the harm could not be felt there.
32. As far as the appellant is concerned, the evidence is that he was living in the United Kingdom at the material time. It was accepted by the court in Poland that he was living abroad for several years. The Judicial Authority accepted in the court below that they could not say when he left Poland. In her judgment the District Judge found that the appellant was by his own admission habitually resident in England.
33. There is no evidence that the appellant was living in Poland at the time of the offending.
34. Miss Grudzinska draws my attention to the case of *Matwiejow v Regional Court in Tarnobrzeg (Poland)* [2019] EWHC 2207 (Admin). At [15] Nicol J found that as the burden of proof fell on the requesting Judicial Authority to prove to the criminal standard all the necessary factual elements justifying

extradition the uncertainty as to where the appropriation in a case of theft took place redounded against the respondent.

35. So it is, she submits, in this case. The Judicial Authority cannot prove to the criminal standard that either the appellant or victim were in Poland when the conduct took place. Given that the appellant lived in the United Kingdom and the victim in Berlin the likelihood is that they were each in those places at the relevant time.

***Respondent***

36. Miss Brieskova submits that both sections 10 and 65(3) of the Act are satisfied in this case and that the Judicial Authority can show to the criminal standard that some of the conduct took place in Poland.
37. There is no dispute that the appellant was at the material time habitually resident in the United Kingdom and no dispute that the victim lived for much of the time in Berlin. That does not mean that all of the conduct must have taken place outside of Poland.
38. It is clear from the face of the warrant that the conduct occurred in Berlin and in Mysliborz. What is stated by the Judicial Authority in the warrant should be afforded mutual trust, confidence and respect.
39. The conduct in Berlin falls away as it is conceded that this would not have been an offence in the United Kingdom at the material time. Regarding Mysliborz in Poland the clear statement in the warrant means one of two things. Firstly that it has been proved that the appellant was in Poland when he committed the conduct described, regardless of where the victim was. The

warrant is clear in its terms that this was the case for at least some of the conduct.

40. This is additionally supported by the fact that the appellant's address is in Mysliborz in Poland. By his own admission in his defence statement of 23 July 2023 he was in Poland on 5 March 2017. He said that he was there for a week visiting his parents and was on a boat trip on that date which was the day that the victim committed suicide in Germany. It was on this date according to the warrant that the appellant made abusive phone calls and put her naked photographs on Facebook.
41. The second scenario is that the victim was in Poland when some of the conduct took place. If the victim was there when she received some of the messages, texts and telephone calls the conduct can properly be said to have taken place there. The material relied upon by the appellant suggests that the victim lived in Berlin where he would visit her. However the further information states that her permanent address was in Poland. The address given is only a short distance from Mysliborz.
42. These facts, taken together with what is said on the face of the warrant, are sufficient to prove to the criminal standard that some of the conduct occurred in Poland and that the offence is therefore an "extradition offence". The District Judge comprehensively considered the facts and the law in this case and whilst she was wrong to find that the conduct in Berlin was an extradition offence she was not wrong to find that conduct also occurred in Poland.

## **Discussion and conclusion**

43. There is no dispute that the District Judge was wrong to find that conduct which occurred in Berlin satisfied section 65(4) of the Act. The question is whether, notwithstanding that fact, sections 10 and 65(3) of the Act were satisfied. That is to say was there sufficient evidence to prove to the criminal standard that, applying *Cando Armas*, some of the conduct occurred in Poland?
44. In this case the relevant conduct as defined by section 76(1)(a) of the Serious Crime Act 2015 is that the appellant “*repeatedly or continuously engages in behaviour towards the [victim] that is controlling or coercive.*” There is no definition of “repeatedly or continuously” within the Serious Crime Act. In my view “repeated” must mean more than once.
45. The conduct described in the warrant is largely of a digital nature. That is to say that threats were made and other coercive and controlling behaviour took place via social media and internet messages. By the very nature of the material this could have occurred with the appellant and the victim in any jurisdiction.
46. I agree with the respondent that for the conduct to comply with section 65(3) of the Act either the appellant had to be in Poland at the time some of the conduct took place or the victim had to be in Poland for the malign effects of it to be felt there. To comply with section 76 of the Serious Crime Act there would have to have been more than one occasion either one of them was in Poland when the appellant’s behaviour towards the victim was controlling or coercive. It was unnecessary for both of them to have been in Poland at those times.

47. The time period of the offending was December 2016 to 5 March 2017. I agree with the appellant that the material before the District Judge indicated that the victim lived much of the time in Berlin and the appellant lived in the United Kingdom. There is no dispute that this was the case. However, where the appellant and the victim habitually lived, whilst relevant, is not determinative of the matter. As was said in *Cando Armas* it is sufficient if some of the conduct took place in Poland.
48. It is for this reason that I do not admit the fresh evidence. The appellant had the document concerning the victim's divorce at the hearing below. He chose not to adduce it. However, even if I decided that, unrepresented as the appellant was, the material now sought to be relied upon was unavailable at the court below, I agree with the respondent that none of it would have made the result different, resulting in the appellant's discharge. The District Judge accepted that the appellant had lived in the United Kingdom since 2010. There is no dispute that the victim lived in Berlin. It is apparent from the face of the warrant that some of the conduct took place there. The "fresh evidence" takes the matter no further, is not decisive and is not admissible in this appeal.
49. It is clear from her judgment that the District Judge did not have the benefit of the submissions that have been made to me on section 65(3) of the Act. She was faced with many and various submissions made by the appellant in person to contest his extradition. She therefore dealt with whether the offence was an extradition offence very shortly at [70] in her judgment with no detailed reasoning as to why she was sure that section 65(3) of the Act was satisfied.



50. I do not consider however that she was wrong to so find. I agree with the respondent that the warrant is clear on its face that some of what was described as “persistent” conduct occurred in Berlin and some in Mysliborz. This court should afford mutual trust, confidence and respect to the Judicial Authority. The warrant does not state whether the appellant or the victim was in Poland when the conduct occurred but in my view it is clear from the warrant that it was one or the other. The conduct could not have occurred in Mysliborz otherwise. In this respect this case differs from the facts in *Matwiejow* where the warrant stated that the appropriation, which was the relevant conduct, took place in England.
51. Mysliborz is connected to both the appellant and the victim. The appellant had lived there and the victim close to it. Whilst the victim plainly lived a great deal of time in Berlin, the Further Information states that her permanent address was close to Mysliborz.
52. Furthermore, the warrant is clear that, in addition to that persistent conduct in Berlin and in Mysliborz, on 5 March 2017 the appellant publicly disseminated the victim’s naked photographs through posting them on Facebook. By the appellant’s own admission he was at that time in Poland on holiday for a week with his parents.
53. In my view posting those photographs was a significant part of the ongoing coercive and controlling behaviour which had taken place before that date. The appellant was in Poland when he posted them. According to the warrant some of that ongoing behaviour before the posting of the photographs had taken place in Poland. There is therefore evidence in my view to prove to the

criminal standard that at least two episodes of coercive and controlling behaviour occurred in Poland. Section 65(3)(a) of the Act is thereby satisfied.

54. I therefore consider that the District Judge was correct to find to the criminal standard that the conduct which occurred in Poland was an extradition offence for the purposes of sections 10 and 65(3) of the Act.
55. This appeal is accordingly dismissed.