JUDICIARY OF
ENGLAND AND WALES

District Judge [redacted]

In the Westminster Magistrates' Court

Between:

REGIONAL COURT IN [redacted] POLAND

Requesting Judicial Authority

-v-

[redacted]

Requested Person

APPLICATION

1. This is an application made by a judge of the Regional court in [redacted] Poland. The judicial authority is represented by [redacted]

2. Poland is a Category 1 territory for the purposes of the Extradition Act (EA) 2003.

3. The requested person is [redacted] He was born in [redacted] He is 31 years old. He is represented by Ms. Ania Grudzinska.

REPORTING RESTRICTIONS

4. In this case, the welfare of the requested person's children has formed a significant part of the case. In some such cases, I have been asked to consider anonymising my judgment to protect the interests of a child or children. I have declined to do so. This is because there is no power to anonymise a judgment in the interests of a child who is neither a witness nor a party to proceedings. Furthermore, any attempt to anonymise would offend against the principle of open justice. As Sir Igor Judge, President of the Queen's Bench Division as he then was, observed in *In re Trinity Mirror plc and others* [2008] QB 770:

> *"It is impossible to over emphasise the importance to be attached to the ability of the media to report criminal trials...It is sad, but true, that the criminal activities of a parent can bring misery, shame and disadvantages to their innocent children...All this represents the further consequences of crime, adding to the list of its victims...If the court were to uphold [a ruling on anonymity] so as to protect the rights of the defendant's children under article 8, it would be countenancing a substantial erosion of the principles of open justice, to the overwhelming disadvantage of public confidence in the criminal justice system..."*

EAW – Ref: [redacted]

5. A European Arrest Warrant (EAW) was issued by the judicial authority on 27th January 2017 and certified by the National Crime Agency in the United Kingdom on 20th February 2017.

6. The EAW is a conviction warrant.

7. **Box B**: The decisions on which the warrant is based are described as:
   A. Judgment of the District Court in [redacted] dated 22nd September 2011 [redacted] issued for the offence under Article 286(1) of the Polish Penal Code concurrently with Article 227 and Article 11(2).
   B. Judgment of the District Court in [redacted] dated 20th June 2013 [redacted] issued for the offence under Article 13(1) of the Penal Code in conjunction with Article 286(1) and Article 270(1) and Article 11(2) and Article 12.

8. **Box C**: The length of custodial sentence imposed is:

A. 6 months for Articles 286(1), 227, 11(2) plus 4 months for Article 227, replaced with an aggregate penalty of 10 months' imprisonment, the execution of which was conditionally suspended for a trial period of 5 years; by the decision of the District Court in [redacted] dated 15th November 2013 [redacted] the execution of the penalty of 10 months imprisonment was ordered.

B. 1 year of imprisonment, the execution of which was conditionally suspended for a trial period of 5 years; by the decision of the District Court in [redacted] dated 18th November 2014 [redacted] the execution of the penalty of 1 year of imprisonment was ordered.

9. The remaining sentence to be served is:

A. 10 months.

B. 1 year.

10. **Box D**: The EAW states that:

A. Mr. [redacted] did not appear in person at the trial resulting in decision [redacted] on 22nd September 2011. He was duly notified of the scheduled trial on 22nd September 2011. The EAW confirms that he received official information of the scheduled date and place of the trial which resulted in the decision in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that a decision may be handed down if he does not appear.

B. Mr. [redacted] did appear in person at the trial resulting in decision [redacted] He was brought from the Penal Institution in [redacted] for the scheduled trials on 24th January 2013, 22nd February 2013, 4th April 2013, and he appeared in person at the scheduled trial on 30th April 2013. He did not appear in person at the scheduled trials on 21st May 2013 or 14th June 2013 but had been informed of the next scheduled date of 21st May 2013 when he appeared at trial on 30th April 2013. He was also informed by an advice note of the scheduled trial on 14th June 2013. For these latter dates, the EAW confirms that he received official information of the scheduled date and place of the trial which resulted in the decision in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that a decision may be handed down if he does not appear.

11. **Box E**: The EAW relates to three offences. They are:

A. (a) On 12th June 2011, in [redacted] acting jointly with an established person in [redacted] Street and in [redacted] Street, he pretended to be a police officer and was performing activities associated with that role involving the imposition of a penalty ticket of PLN 100 [£24.11] for walking a dog without a muzzle; thus he caused [redacted] and his wife, [redacted] to disadvantageously dispose of their own property and as a result he extorted PLN 20 from them for the fact of relinquishment of giving a ticket.

(b) On 12th June 2011, in [redacted] acting jointly with an established person in [redacted] Street, he pretended to be a police officer and was performing activities associated with that role involving asking [redacted] to present her licence to trade and her ID card in order to be identified.

B. From 18th to 24th January 2012 in [redacted] acting for financial gain, with premeditated intent, by misleading the employees of [redacted] company, he attempted to cause [redacted] (registered in [redacted] to disadvantageously dispose of property amounting to PLN 740 [£140.69], acting in such a manner that on 15 [named and numbered] contracts he faked signatures; but he did not achieve his intended purpose due to verification to the agreements by an employee of the company [redacted] furthermore, between 20th and 24th January 2012, at an undetermined location, for financial gain, he faked the signatures on 22 [named and numbered] contracts.

12. The warrant is certified to show that the offence is punishable with at least three years' imprisonment and that the conduct falls within the European Framework list as (a) forgery of administrative documents and trafficking therein; (b) fraud.

ISSUES RAISED

13. At the initial hearing, Mr. [redacted] indicated that he would seek to rely on Article 8. In a skeleton argument, dated 31st January 2020, Ms. Grudzinska confirmed that Article 8 would be the only issue. This was indeed the only issue raised at the final hearing.

HISTORY OF PROCEEDINGS

14. Mr. [redacted] was arrested in [redacted] on 10th January 2020.

15. Mr. [redacted] first appeared at Westminster Magistrates' Court on 11th January 2020. The matter was formally opened on that date.

16. The final hearing in this matter took place before me on 10th February 2020

17. Mr. [redacted] has enjoyed conditional bail during proceedings, though he spent a period of about two weeks in custody at the outset whilst pre-release conditions were being satisfied. He has had the benefit of a Polish interpreter.

THE EVIDENCE/FINDINGS OF FACTS

Evidence received

18. I have received the following information:
    a. Form A;
    b. UK Central Authority for the Exchange of Criminal Records printout;
    c. Mr. [redacted] blue personal details form;
    d. Statement of [redacted] dated 22nd January 2020;
    e. Mr. [redacted] proof of evidence, dated 30th January 2020;
    f. Statement of [redacted], dated 30th January 2020;
    g. Statement of [redacted] dated 4th February 2020.

19. At the final hearing, I heard evidence on oath from the requested person. His partner, [redacted], attended court but her evidence was not challenged.

Background

20. Mr. [redacted] first moved to the UK in 2007 and settled in [redacted]

21. Mr. [redacted] did return to Poland three times, in 2010, 2011 and 2013.

22. Mr. [redacted] says that he has had no address in Poland since 2007.

Criminal activity in Poland

23. Mr. [redacted] has one other conviction in Poland. On 4th March 2011, he was convicted of an offence of theft after unlawful entry into property (committed on 17th October 2010). He was sentenced to one year of imprisonment suspended for 2 years with probation/supervision. This sentence appears later to have been activated on 31st January 2012. Mr. [redacted] confirmed that he served the sentence of one year's imprisonment. Furthermore, he claimed in oral evidence that he sent a letter to the prosecutor's office before completing his sentence, asking whether any other sentences were activated [this would have been after the first suspended sentence on the EAW had been imposed]. He said that the prosecutor wrote to say that there were no grounds for activating any other sentence. I have not been provided with any documentation to confirm this.

24. The first two offences on the EAW (A) took place on 12th June 2011. Mr. [redacted] stated that he worked for 6 weeks with a cousin as a security guard/doorman for a friend's party venue. He said that they had uniforms which looked very similar to police uniforms. He confirmed that his cousin stopped a victim and asked her to present her ID or pay a fine. Mr. [redacted] accepted that he stopped a couple for walking their dog without a muzzle and told them he would give them a fine of 100 PLN. He said they could pay 20 PLN there and then instead, which they did. Mr. [redacted] confirmed that he and his cousin were arrested.

25. Mr. [redacted] confirmed that he was sentenced to 10 months' imprisonment suspended for 5 years. He suggested that the only condition to his suspended sentence was to repay the money, which he had already done. This seems inherently unlikely to be the only condition, but the judicial authority has not provided any further information as to the conditions of the suspended sentence.

26. The EAW confirms that the trial in that matter took place on 22nd September 2011.

27. The third offence on the EAW (B) took place between 18th and 24th January 2012. Mr. [redacted] confirmed that he worked briefly in customer service at a telecommunications company called [redacted] or [redacted] He said that he only worked there for 10 days before he quit. His role was to obtain new customers by getting them to switch phone contracts. He suggested that his boss made operate a scam on the customers. Mr. [redacted] said that he made no money there and actually lost money in expenses. He said that he called the police and reported the incident. He said that he did not think anything more of it and returned to the UK.

28. In April 2013, Mr. [redacted] returned to Poland for a holiday and visited his grandmother. She told him that police had been to her address looking for him and she gave him a letter from the police. Mr. [redacted] said that he went to the police station and found out that it was in relation to an allegation by his boss that he had been lying to customers. Mr. [redacted] said that he also went to court and spoke to a judge about the situation. He said that the judge told him to wait to hear from the court. Mr. [redacted] said that he told the court that he lived in the UK. He suggested that the judge told him that that was not a problem.

29. The EAW confirms that the trial in that matter took place between 24th January 2013 and 14th June 2013. It appears that Mr. [redacted] was brought from prison for some of the appearances, when he was presumably serving his one year sentence on his other conviction. He told me in oral evidence that he told the

judge that he would be leaving for Great Britain on 5th May 2013. He said that the judge told him that this was not a problem.

30. I note that the EAW was issued on 27th January 2017 and certified on 20th February 2017. No explanation has been given for the passage of almost three years since certification.

Personal circumstances

31. Mr. [redacted] former partner is [redacted] They have two sons together:

a. [redacted] (aged 4);

b. [redacted] (aged 2).

32. Mr. [redacted] has worked in the past as a valeter and driver for a car rental company.

33. In August 2018, Mr. [redacted] applied for a Polish passport whilst in the UK and had no apparent difficulties with that.

Fugitive status

34. I am not satisfied so that I am sure that Mr. [redacted] is a fugitive from Polish justice. The judicial authority has supplied no details as to the conditions attached to either suspended sentence. The judicial authority has not provided any evidence as to the circumstances (aside from the date) surrounding the activation of the suspended sentences. I am unable to ascertain whether Mr. [redacted] deliberately and knowingly prevented himself from performing the obligations of his sentence (*Wisniewski v Poland* [2016] 386 EWHC (Admin). Nor am I satisfied on the material before me that Mr. [redacted] has chosen to place himself beyond the reach of the Polish judicial system (*Wisniewski*).

Situation today

35. Mr. [redacted] and his family are in good health.

36. Though they are separated, Mr. [redacted] and his partner still have a good relationship and they live together. Mr. [redacted] is very involved with the upbringing of his sons.

37. Mr. [redacted]s mother, [redacted], lives in the UK with her partner, [redacted] She is 53 years old. She has some health concerns relating to her heart, back and legs. She says that she has been diagnosed with paranoid schizophrenia, depression and a trapped nerve in her back. She takes medication (I have been provided with a copy of her medication chart). Mr. [redacted] states that he takes responsibility for being his mother's carer. He visits her for four days a week and spends many hours with her. He cooks, buys groceries and oil (for heating) and helps her to leave the house. She can walk but she has some mobility issues. She does not speak English. She does not have a car. Mr. [redacted] drives her to medical appointments. She has at least two medical appointments each month. When Mr. [redacted] was in prison on remand, she had to ask an acquaintance to translate for her at a doctor's appointment. She felt very anxious about this. She also says that her depression worsened while he was in prison. She barely leaves the house. She does not consider that she would be able to travel to Poland to see Mr. [redacted]

38. Mr. [redacted] used to be the carer for Mrs. [redacted] and also worked in a factory. However, he developed problems with his hand and back due to work. He is on sick leave and requires an operation. He also does not speak English.

39. Mr. [redacted] has a sister in the UK. She is 22. She lives with her boyfriend in student accommodation in [redacted] She is busy with her studies. Mrs. [redacted] suggests that she does not have a good relationship with her daughter and does not speak to her.

40. Mr. [redacted] has three cousins living in the UK, one of whom lives in [redacted]

41. Mr. [redacted] has no family living back in Poland. His father lives in [redacted]

42. Mr. [redacted] has no convictions or cautions in this jurisdiction.

43. Mr. [redacted] partner works part time, three days a week, usually between 8am and 1pm.

44. Mr. [redacted] is worried about the impact of extradition upon his family, particularly his sons. His children are very close to him. They miss him when he was not there. When he was in prison, it was particularly upsetting for them. He suggests that their mother will not be able to cope with them on her own. Their working patterns are designed so that one can look after the children.

45. Ms. [redacted] does not believe that she would be able to afford plane tickets to travel to Poland to visit Mr. [redacted] She has no family ties left in Poland, save for aunts and uncles.

46. Ms. [redacted] parents, sister and brother live near her in the UK. But she suggests that they are unable to help with the children because they all work full time.

47. When Mr. [redacted] was in prison on remand, Ms. [redacted] had to change the times that she took the children to nursery and had to pay more money than was usual. She found this very difficult financially.

GROUNDS FOR CHALLENGE

Section 2 – Warrant and certificate

48. No challenges have been made under section 2 of the EA 2003. I am satisfied that the warrant is a valid Part 1 warrant and was properly issued and certified.

Section 4 – Person arrested

49. No challenge was made under section 4 of the EA 2003.

Section 7 – Identity

50. No challenge has been made under section 7 of the EA 2003. I am satisfied that this warrant applies to Mr. [redacted]

Section 10 – Extradition offence

51. No challenge has been made under section 10. I am satisfied that each of the offences on the EAW is an extradition offence.

52. In relation to (A), section 65(3) is made out. The conduct occurred in Poland. The conduct would amount to offences if committed this jurisdiction, namely impersonation of a police officer (section 90(1) of the Police Act 1996) or fraud. A sentence of greater than 4 months has been imposed, namely 10 months.

53. In relation to (B), section 65(5) is made out. The conduct occurred in Poland. None of the conduct occurred in the UK. The conduct is certified as falling within the European framework list as forgery and fraud. It is certified that a sentence of greater than 4 months has been imposed, namely one year.

54. I must therefore go on to consider whether any of the bars to extradition in section 11 of the EA 2003 are applicable.

Section 11 bars to Extradition – Conclusion

55. Mr.[redacted]does not seek to argue that his extradition is barred by operation of section 11 and sections 12 to 19F of the EA 2003. Nor do I consider that any such bar exists. I must therefore go on to consider section 20 of the EA 2003.

Section 20 – Case where person has been convicted

56. No challenge has been made under section 20. In relation to these two convictions, I am satisfied that Mr. [redacted] was either convicted in his presence or the evidence shows that he deliberately absented himself from trial.

57. I therefore go on to consider section 21.

Section 21 – Human rights

Law

58. Section 21 of the EA 2003 provides:

> **21. Person unlawfully at large human rights**
>
> (1) If the judge is required to proceed under this section (by virtue of section 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c.42).
>
> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
>
> (3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.
>
> (4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the category 1 territory.
>
> (5) If the person is remanded in custody, the appropriate judge may later grant bail.

59. In deciding whether extradition would be compatible with the requested person's Convention rights, the starting point is the presumption (which is not easily displaced) that the requesting state will comply with its Convention obligations. That presumption is capable of being rebutted by clear and cogent evidence which establishes that extradition would not be compatible with the requested person's Convention rights. In practical terms, the burden of

displacing the assumption will be a heavy one (*Agius v Court of Magistrates, Malta* [2011] EWHC 759 (Admin). Given the heavy burden on the requested person, it will not be enough simply to rely on the requested person's own evidence or assertions of risk (*G v District Court of Czestochowa, Poland* [2011] EWHC 1597 (Admin)).

60. Extradition proceedings may be barred if there is either a real risk that extradition will breach the requested person's Convention Rights (*Soering v UK* (1989) 11 EHRR 439) or where the domestic extradition procedure would result in a violation of the Convention.

Article 8 – Right to respect for private and family life

61. Article 8 of the ECHR provides:

> **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 wellbeing 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.

62. The general principles in relation to the application of Article 8 in the context of extradition proceedings are set out in two decisions of the Supreme Court: *Norris v Government of the USA (No.2)* [2010] UKSC 9, [2010] *2 AC 487*, and *HH* [2012] UKSC 25.

63. In *Norris*, Lord Phillips of Worth Matravers set out the correct approach to an Article 8 claim:

> "[56] The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves. That, no doubt, is what the commission had in mind in *Launder* 25 EHRR CD 67, 73 when it stated that it was only in exceptional circumstances that extradition would be an unjustified or disproportionate interference with the right to respect for family life. I can see no reason why the district judge should not, when considering a challenge to extradition founded on article 8, explain his rejection of such a challenge, where appropriate, by remarking that there was nothing out of the

ordinary or exceptional in the consequences that extradition would have for the family life of the person resisting extradition. Exceptional circumstances is a phrase that says little about the nature of the circumstances. Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition. A judge should not be criticised if, as part of his process of reasoning, he considers how, if at all, the nature and extent of the impact of extradition on family life would differ from the normal consequences of extradition."

64. Lord Phillips also observed:

> "[64] When considering the impact of extradition on family life, this question does not fall to be considered simply from the viewpoint of the extraditee...[In] the immigration context in *Beoku-Betts v Secretary of State for the Home department* [2009] AC 115...the House concluded that, when considering interference with article 8, the family unit had to be considered as a whole, and each family member had to be regarded as a victim, I consider that this is equally the position in the context of extradition.
>
> "[65] Indeed, in trying to envisage a situation in which interference with article 8 might prevent extradition, I have concluded that the effect of extradition on innocent members of the extraditee's family might well be a particularly cogent consideration. If extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, the combination of circumstances might well lead to a judge to discharge the extraditee..."

65. Each of Their Lordships in *Norris* made statements about the difficulties in resisting extradition on the grounds of interference with Article 8: *"resisting extradition on this ground is not easy"* (Lord Hope of Craighead); *"it will only be in the rarest cases"* (Lord Brown of Eaton-Under-Heywood); *"exceptionally serious aspects or consequences...may...outweigh the force of the public interest"* (Lord Mance); *"in cases of extradition, interference with family life may easily be justified"* (Lord Collins of Mapesbury); *"article 8 claims are only likely to overcome the imperative of extradition in the rarest of cases"* (Lord Kerr of Tonaghmore).

66. In *HH,* Lady Hale drew a number of conclusions from *Norris*:

> "[8] ...
>
> (1) [T]he court has...to examine carefully the way in which [extradition] will interfere with family life
>
> (2) There is no test of exceptionality in [extradition]
>
> (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) The public interest will always carry great weight, but the weight to be attached to it in the particular case does not 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 and 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."

67. Lady Hale observed that, in most cases where the person whose extradition is sought is not the sole or primary carer for children, the court would be able to proceed without further investigation. She then stated:

> "[83] The cases likely to require further investigation are those where the extradition of both parents, or of the sole or primary carer, is sought. Then the court will have to have information about the likely effect upon the individual child or children involved if the extradition is to proceed; about the arrangements which will be made for their care while the parent is away; about the availability of measures to limit the effects of separation in the requesting state, such as mother and baby units, house arrest as an alternative to prison, prison visits, telephone calls and face-time over the telephone or internet; and about the availability of alternative measures, such as prosecution here or early repatriation."

68. Also in *HH*, Lord Judge made clear when dealing with the position of children that:

> "[132] [T]he fulfilment of our international obligations remains an imperative...When resistance to extradition is advanced...on the basis of the article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence: any other approach would be inconsistent with the principles of international comity. At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration of the level of sentences of the arrangements for prisoner release which we are informed are likely to operate in the country seeking extradition. It certainly does not follow that extradition should be refused just because the sentencing court in this country would not order an immediate custodial sentence: however it would become relevant to the decision if the interests of a child or children might tip the sentencing scale here so as to reduce what would otherwise be an immediate custodial sentence in favour of a non-custodial sentence (including a suspended sentence)."

69. In the case of *Celinski and others v Slovakian Judicial Authority* [2015] EWHC 1274 (Admin), Lord Chief Justice Thomas set out the framework to be applied:

> "[7] It is clear from our consideration of these appeals that it is important that the judge in the extradition hearing bears in mind, when applying the principles set out in Norris and HH, a number of matters.
>
> "[8] First, HH concerned three cases each of which involved the interests of children: ...The judgments must be read in that context.
>
> "[9] Second the public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice. We would expect a judge to address these factors expressly in the reasoned judgment.
>
> "[10] Third the decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect. Part I of the 2003 Act gave effect to the European Framework Decision of 13 June 2002; it replaced the system of requests for extradition by Governments (of which the judicial review before the court in respect of the Polish national is a surviving illustration). The arrangements under Part I of the 2003 Act operate between judicial authorities without any intervention of governments. In applying the principles to requests by judicial authorities within the European Union, it is essential therefore to bear in mind that the procedures under Part I (reflecting the Framework Decision) are based on principles of mutual confidence and respect between the judicial authorities of the Member States of the European Union. As the UK has been subject to the jurisdiction of the CJEU since 1 December 2014, it is important for the courts of England and Wales to have regard to the jurisprudence of that court on the Framework Decision and the importance of mutual confidence and respect.
>
> "[11] Fourth, decisions on whether to prosecute an offender in England and Wales are on constitutional principles ordinarily matters for the independent decision of the prosecutor save in circumstances set out in authorities such as *A (RJ)* [2012] 2 Cr App R 8, [2012] EWCA Crim 434; challenges to those decisions are generally only permissible in the pre-trial criminal proceedings or the trial itself. The independence of prosecutorial decisions must be borne in mind when considering issues under Article 8.
>
> "[12] Fifth, factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will take into account; it is therefore important in an accusation EAW for the judge at the extradition hearing to bear that in mind. Although personal factors relating to family life will be factors to be brought into the balance under Article 8, the judge must also take into account that these will also form part of the matters considered by the court in the requesting state in the event of conviction.
>
> "[13] Sixth in relation to conviction appeals:
>
> > i) The judge at the extradition hearing will seldom have the detailed knowledge of the proceedings or of the background or previous offending history of the offender which the sentencing judge had before him.
> >
> > ii) Each Member State is entitled to set its own sentencing regime and levels of sentence. Provided it is in accordance with the Convention, it is not for a UK judge to second guess that policy. The prevalence and significance of certain types of offending are matters for the requesting state and judiciary

to decide; currency conversions may tell little of the real monetary value of items stolen or of sums defrauded. For example, if a state has a sentencing regime under which suspended sentences are passed on conditions such as regular reporting and such a regime results in such sentences being passed much more readily than the UK, then a court in the UK should respect the importance to courts in that state of seeking to enforce non-compliance with the terms of a suspended sentence.

iii) It will therefore rarely be appropriate for the court in the UK to consider whether the sentence was very significantly different from what a UK court would have imposed, let alone to approach extradition issues by substituting its own view of what the appropriate sentence should have been...

"[14] It is also clear, as some of these appeals illustrate:

i) The basic principles to which we have referred have not always been taken properly into account at the extradition hearing.

ii) A structured approach has not always been applied to the balancing of the factors under Article 8. This is essential, because each case turns on the facts as found by the judge and the balancing of the considerations set out in Norris and HH. We suggest at paragraph 15 below, an approach which would fulfil this requirement.

iii) Decisions of the Administrative Court in relation to Article 8 are often cited to the court. It should, in our view, rarely, if ever, be necessary to cite to the court hearing the extradition proceedings or on an appeal decisions on Article 8 which are made in other cases, as these are invariably fact specific and in individual cases judges of the Administrative Court are not laying down new principles. Many such cases were referred to in the skeleton arguments. We have referred to none of them in this judgment, as the principles to be applied are those set out in Norris and HH. If further guidance on the application of the principles is needed, such guidance will be given by a specially constituted Divisional Court or on appeal to the Supreme Court. It is not helpful to the proper conduct of extradition proceedings that the current practice of citation of authorities other than Norris and HH is continued either in the extradition hearing or on appeal.

"[15] As we have indicated, it is important in our view that judges hearing cases where reliance is placed on Article 8 adopt an approach which clearly sets out an analysis of the facts as found and contains in succinct and clear terms adequate reasoning for the conclusion arrived at by balancing the necessary considerations.

"[16] The approach should be one where the judge, after finding the facts, ordinarily sets out each of the "pros" and "cons" in what has aptly been described as a "balance sheet" in some of the cases concerning issues of Article 8 which have arisen in the context of care order or adoption: see the cases cited at paragraphs 30 to 44 of *Re B-S (Adoption: Application of s.47(5))* [2013] EWCA Civ 1146. The judge should then, having set out the "pros" and "cons" in the "balance sheet" approach, set out his reasoned conclusions as to why extradition should be ordered or the defendant discharged.

"[17] We would therefore hope that the judge would list the factors that favoured extradition and then the factors that militated against extradition. The judge would then, on the basis of the identification of the relevant factors, set out his/her conclusion as the result of balancing those factors with reasoning to support that conclusion. As appeals in these cases are, for the reasons we shall examine, common, such an approach is of the greatest assistance to an appellate court.

> "[39] ...The important public interests in upholding extradition arrangements, and in preventing the UK being a safe haven for a fugitive...would require very strong counter-balancing factors before extradition could be disproportionate..."

Submissions

70. On behalf of the requested person. Ms. Grudzinska submits that the offences are relatively minor, attracting suspended sentences in the first instance; the offences are relatively old; Mr. [redacted] is now more mature and has two young children for whom he is responsible; there is unexplained delay between activation of the sentences and the issuing of the EAW, then between certification and today; Mr. [redacted] has had a stable life here for many years; the article 8 rights of his family are engaged; and he has caring responsibilities for his mother.

71. On behalf of the judicial authority, [redacted] submits that Mr. [redacted] is a fugitive. He relies on the normal, weighty public interest in extradition.

Analysis

Factors for and against extradition

72. In the balance **in favour of extradition**, I take account of these factors:

- The constant and weighty public interest in extradition, which includes:
    - The significant public interest in people convicted of crimes serving their sentences;
    - The powerful requirement on the UK to fulfil its treaty obligations to other countries, including its obligations under the European Arrest Warrant scheme;
- The principle of mutual confidence and respect shown by the English courts for the decisions of the Polish judicial authority.
- Respect for the independent prosecutorial decision made in Poland.

- Factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will have taken into account.
- Those factors raised by Mr. [redacted] in his Article 8 can be considered by the judicial authority upon his surrender.
- The fact that I do not have possession of the detailed knowledge of the proceedings or background or previous offending history of the requested person which the sentencing judge had before him.
- Respect for the sentencing regime of Poland; This court will assume that the sentence reflects the gravity of the offending in all the circumstances as seen by the court with all necessary knowledge.
- The length of sentence remaining; Mr. [redacted] has not served any of the custodial sentences (save for a couple of weeks on remand in this jurisdiction).
- Mr. [redacted]s former partner works; the children will remain in the care of their mother.
- There are other family members in the UK who may be able to provide support both for the children and for Mr. [redacted]s mother.
- The state is capable of providing for families who are left in financial or other need due to extradition

73. In the balance for the requested person and **militating against extradition**, I take account of these factors

- Mr. [redacted] has a settled family life here in the UK, which he has developed over the last 13 years.
- Not only are the interests of Mr. [redacted] engaged by this process, but the private and family rights of his mother, former partner and children are also engaged; the interests of the children in particular are of primary importance.
- Mr. [redacted] has no convictions or cautions in this country (and no more recent convictions in Poland since the offences on the EAW).

- All three offences on the EAW are relatively minor; the first two offences caused minor loss (which appears to have been repaid); the latter offence is described as an attempt.
- There has been an unexplained period of time between the activation of the suspended sentences and the issuing of the EAW; there has been a further unexplained delay between the certification of the EAW and the arrest of Mr. [redacted] this delay may diminish the weight to be attached to the public interest in extradition; it certainly increases the impact upon private and family life, particularly given that Mr. [redacted]s sons have been born in the intervening period.
- There is no explanation for why Mr. [redacted] was able to obtain a Polish passport in April 2018 after the EAW was issued without difficulty.
- Extradition and consequent separation will cause emotional harm to Mr. [redacted] and his family.
- Mr. [redacted] is a significant financial provider in the household and extradition will remove his income from the family.
- Mr. [redacted] is heavily involved with the upbringing of his children.
- His partner may find it difficult to cope, practically and financially, with looking after the children on her own.
- Mr. [redacted] provides significant caring duties to his mother.
- Mr. [redacted] has no family back in Poland.
- The evidence suggests that Mr. [redacted]s family would be unable to visit him during any period spent in custody in Poland.

Conclusion on Article 8

74. I have found this case to be fairly evenly balanced. On the one hand, there is always the weighty public interest in extradition to our European partners. Mr. [redacted] faces a sentence for three offences. He has served almost none of that sentence. It will always be difficult to avoid extradition in such circumstances.

75. I have, however, concluded that the factors against extradition outweigh those in favour of it in this case. The offences themselves are relatively minor and

merited suspended sentences in the first instance. No explanation has been given as to why his sentences were activated. Furthermore, there are some delays in this process which have not been explained. They are not the longest of delays seen by this court but they are very significant in this case because Mr. [redacted]s two young sons have been born during the course of those delays. These boys are, in my judgment, the determining factor in this case. I am of the view that the removal of their father from their lives at this stage, when he has been a permanent fixture in their lives thus far, will cause significant practical and emotional harm to them. Though they would remain in the care of their mother, I do not consider that the wrench of removing their father from their lives is proportionate to the circumstances of his previous offending of eight and nine years ago. That he provides important caring duties for his mother, who is in poor health, adds further weight against extradition.

76. I thus conclude that extradition would not be compatible with the European Convention rights of this requested person and his family.

ORDERS

77. I therefore order Mr. [redacted] to be discharged on this EAW, pursuant to section 21(2) of the EA 2003.

[redacted]

DISTRICT JUDGE (MAGISTRATES' COURTS)

APPROPRIATE JUDGE (s.67(1)(a) of the Extradition Act 2003)

13th February 2020