Neutral Citation Number: [2019] EWHC 3528 (Admin)

Case No: CO/487/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 December 2019

Before:

MR JUSTICE JEREMY BAKER

- -

Between:

Jiri Balog	**Appellant**
- and -	
Court in České Budějovice (Czech Republic)	**Respondent**

- -
- -

Mr David Williams (instructed by **ABV Solicitors**) for the **Appellant**
Mr Alex Tinsley (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date: 12 December 2019

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Approved Judgment

Mr Justice Jeremy Baker:

1. Jiri Balog ("the appellant") appeals under section 26 of the Extradition Act 2003 ("the 2003 Act") with the permission of McGowan J, granted on renewal after refusal by Elisabeth Laing J, against an order for his extradition to the Czech Republic made by District Judge Snow on 31 January 2019.

2. The order was made in respect of an accusation European Arrest Warrant ("EAW") which was issued by the Regional Court in České Budějovice ("the respondent") on 31 July 2017 and certified by the National Crime Agency on 15 August 2017, in respect of an allegation of being an accomplice to the offence of Trafficking in human beings, contrary to sections 23 and 168(2)(a) and (3)(a – d) of the Criminal Code, the maximum sentence for which, upon conviction, is 12 years' imprisonment.

3. It is alleged that in 2010 the appellant deceived a 20-year-old woman into travelling with him to the UK on the pretext that she would be employed to work as a carer for his sick mother, but instead she was forced into prostitution.

Background

4. The appellant was born in the Czech Republic on 29 January 1992 and is now 27 years of age.

5. According to the appellant's 1st witness statement dated 23 October 2018, his father left the family when the appellant was 6 years of age and has since died. When the appellant was 9 years of age he and his siblings were removed from their mother's care. Although his siblings returned to their mother's care, the appellant remained in an orphanage and later an education centre until he was 18. By then his family had moved to the UK. In 2010 the appellant suggested to his long-term girlfriend ("BB" the victim of the alleged people trafficking offence) that they should travel together to the UK so that she could look after his mother.

6. On arrival in the UK on 24 August 2010 the appellant and BB travelled to Bradford where his mother resided. After a period of about a week BB left him and went to live with another male ("JB"). As a result of this the appellant left Bradford and went to live and work in Crewe where he met his current partner, Renata Zacharova. Since then they have had two children together. The appellant and Renata Zacharova live in Stoke-on-Trent where the appellant has part-time employment in a car wash business.

7. In his 1st witness statement the appellant commented on the alleged offence as follows:

> "I fully deny the allegations against me. I deny being involved in any human trafficking at all. I did not know anything about this until I was arrested at my home address and taken to court. I was shocked and didn't understand what was happening."

8. On 1 November 2018, at the request of the UK authorities, the respondent provided further written information which included the following:

    i. The criminal proceedings against the appellant were initiated by the police in the Czech Republic by way of a statutory resolution on 15 October 2012;

    ii. In the course of an interview with the Czech police on 24 April 2013, in which the appellant was represented by counsel, the appellant acknowledged that the resolution had been served on him personally on 10 April 2013;

    iii. On 20 June 2016 a phone call took place between a member of the Czech police and the appellant in which the appellant acknowledged that he had received notification of his right to study the criminal file against him, but had subsequently declined to do so by text;

    iv. On 13 January 2017 a request for service of the indictment and writ of summons was sent by the respondent to the UK authorities requesting service of the same upon the appellant;

    v. Four other individuals have been convicted in the Czech Republic in relation to their involvement in the human trafficking offence alleged against the appellant;

    vi. The appellant having left the Czech Republic in 2010 and coming to the UK had complicated the conduct of the prosecution against him;

    vii. The alleged victim of the human trafficking offence continues to suffer trauma and that her questioning is very difficult to implement.

9. In his 2nd witness statement dated 21 January 2019, made in response to the further information provided by the respondent, the appellant acknowledged that he had been interviewed by the Czech police on 24 April 2013 and that he had been personally served with a document on 10 April 2013. However, he contended that this was simply a request for him to attend for the interview and he had no recollection that it included

information about the resolution that had been made to commence criminal proceedings against him. He stated that the only other document which he received was in 2016 when he was notified of his right to study the criminal file against him. He stated that had he known that a decision to prosecute him been taken, then he would have made a "greater effort" to return to the Czech Republic and study the file.

10. The appellant stated that throughout the course of the criminal proceedings the respondent was aware of his residence in Stoke-on-Trent, such that there was no justification for the delay in issuing the EAW. He also stated that he understood from his sister, Marie Balogova, that JB had been tried and convicted at Bradford Crown Court for a case relating to sexual and physical abuse.

11. In his 3rd witness statement dated 3 December 2019 the appellant provided evidence to confirm that his partner is due to give birth to twins in April 2020.

The Extradition hearing

12. In the course of the extradition hearing before the judge, three issues were raised on behalf of the appellant under the 2003 Act:

    i. Section 14 passage of time

    ii. Section 19B forum

    iii. Section 21A Article 8 ECHR right to private and family life

13. In his ruling the judge set out the various statutory provisions and referred to the authorities which dealt with them. He then reviewed the relevant evidence, before setting out his evidential findings and providing his conclusions in relation to each of the issues.

14. In relation to the issue of passage of time, the judge found that,

> "The [appellant] has sought to mislead this court about his knowledge of the proceedings. I have no doubt that his intention in his original proof was to persuade this court that he had no knowledge of the case prior to his arrest on this EAW. It was only after service of the further information that he accepted detailed knowledge of the allegation and proceedings in the Czech Republic (specifically the institution of the prosecution against him). I am satisfied that this is not due to some sort of innocent error.
>
> I note that the [respondent] state that the [appellant] "escape(d) to Great Britain" but provide no explanation for the use of that term. I accept that his behaviour delayed and complicated his

> prosecution in the Czech Republic but I am not satisfied so that I am sure that he is a fugitive from justice.
>
> I accept that the [appellant] is employed part time in a car wash.
>
> I accept that he is in a settled relationship and that the couple have 2 children aged 7 and 4 years.
>
> The victim is available to give evidence but questioning of her is difficult as a consequence of the trauma that she suffered."

15. Thereafter he ruled that,

> "37. The [appellant's] challenge is founded on oppression and not injustice. The period of delay with which I am concerned commenced on 24 August 2010. Since that date the [appellant] has formed a settled relationship and has become the father of 2 young sons. The [respondent] have been aware of his presence in the UK and have endeavoured to move the case forward through Mutual Legal Assistance.
>
> 38. The [appellant's] claim of oppression is weakened by his own behaviour that delayed and frustrated his prosecution. The allegations against him are grave.
>
> 39. I am satisfied that it is not either oppressive or unjust to order his surrender. I reject this challenge."

16. In relation to the issue of forum, the judge was satisfied that, notwithstanding that a substantial measure of the [appellant's] relevant activity occurred in England, it was in the interests of justice that the offence should be tried in the Czech Republic. In reaching this conclusion, the judge made the following findings in relation to the specified matters under section 19B(2)(b):

> "(a) The place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
>
> The allegation is that the [appellant], a Czech National, trafficked a 20-year-old Czech woman from the Czech Republic to the UK for the purpose of sexual exploitation. Whilst in the UK further substantial harm resulted from violence inflicted upon her, threats to kill her, her false imprisonment and coercion into prostitution. She was the trafficked into Northern Ireland where she was "sold". Substantial harm occurred in both countries Significant harm occurred in both countries, I regard this as a neutral factor.
>
> (b) The interests of any victims of the extradition offence;

The victim has suffered significant trauma as a consequence of the offences committed against her. This makes questioning of her very difficult. Those difficulties are likely to be made worse if she is required to give evidence in an English Court when her first language is Czech. I am satisfied that the interests of the victim as weighing very heavily in favour of a trial in the Czech Republic.

(c) Any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute [the appellant] in respect of the conduct constituting the extradition offence;

Mr Williams submitted that I should adjourn this hearing to obtain more information regarding the asserted trial of [JB] at Bradford Crown Court. It was open to the [appellant] to obtain that evidence if he felt that it was relevant to the proceedings, however, he instead took the "tactical decision" not to call evidence to confirm event the existence of the trial. The question at this stage is a narrow one, has a prosecutor expressed a belief about this [appellant]. No such belief has been expressed, that is the end of the matter.

Applying the dicta of the LCJ in Scott v USA CO/5201/2017 this subsection is 'only in point if the prosecutor has expressed the relevant belief' (paragraph 31). The prosecutor has expressed no belief. The lack of belief carries no weight.

(d) Were [the appellant] to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;

No information has been provided by [the respondent]. However, it seems likely that evidence could be made available. However, it would require interpretation into English this would add to delay and cost. It is unclear whether the victim would be willing to give evidence before an English court. I regard this matter as weighing heavily in favour of trial in the Czech Republic.

(e) Any delay that might result from proceeding in one jurisdiction rather than another;

The case in the Czech Republic appears to be trial ready, the trials of 4 co-defendants have already concluded. There is no evidence that an investigation against the [appellant] in this country has even begun. Trial in the UK is likely to result in considerable delay. This weighs strongly in favour of trial in the Czech Republic.

(f) The desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to –

(i) The jurisdictions in which witnesses, co-defendants and other suspects are located, and

(ii) The practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;

There is no reason to believe that the important witnesses are not in the Czech Republic. Prosecutions have already occurred in that jurisdiction. Obtaining evidence from the victim is likely to be more challenging in the UK. This weighs in favour of trial in the Czech Republic.

(g) [The appellant's] connections with the United Kingdom.

The [appellant] is a Czech National. He has resided in the UK since 2010. He is in a settled relationship and has 2 young children. He has other relatives in the UK. This weighs strongly in favour of trial in this jurisdiction."

17. Finally, in relation to the issue of the interference with the appellant's private and family life, the judge set out the factors for and against extradition as follows,

"Factors in favour of extradition

54. the following factors weigh in favour of extradition:

a. There is a strong public interest in the UK honouring its international extradition obligations.

b. There is a strong public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice.

c. Decisions of the issuing judicial authority should be accorded a proper degree of confidence and respect.

d. The independence of prosecutorial decision must be borne in mind when considering issues under Article 8.

e. The allegations are grave.

Factors against extradition

55. The following factors weigh against extradition:

a. His residence in the UK which began in 2010.

b. The [appellant] is employed on a part time basis. He will lose that employment if surrendered.

c. The distress that will be caused to the [appellant's] 2 young sons."

18. He then set out his conclusions between [56] and [58] as follows,

"**The balancing exercise**

56. I have firmly in mind the guidance by the former Lord Chief Justice in Polish Judicial Authorities v Celinski and others [2015] EWHC 1274 in considering whether it is incompatible with the [appellant's] Article 8 rights to order his surrender. I remind myself that there is a very high public interest in ensuring that extradition arrangements are honoured, as is the public interest in discouraging persons from seeing the UK as a state willing to accept fugitives from justice. The request of the [respondent] should be accorded a proper degree of mutual confidence and respect.

57. The distress that will be caused to the [appellant's] young sons by separation from their father weighs heavily against extradition. However, they will continue to reside in their current home with their mother. She is likely to have support of other members of the [appellant's] family. This will lessen the weight that I give their rights. The allegations faced by the [appellant] are grave. There is a weighty public interest in his trial that outweighs the Article 8 rights of his family.

58. I am satisfied that it is not incompatible with the Article 8 rights of the [appellant] or his family to order surrender."

Grounds of appeal

19. The grounds of appeal against the order for extradition are threefold:

i. The judge erred in finding that the request was not oppressive as a result of the passage of time;

ii. The judge erred in failing to find that the request should be discharged on the basis of forum;

iii. The judge erred in finding that extradition would not be a disproportionate interference with the applicant's Article 8 ECHR right to private and family life.

20. In relation to the passage of time, it is submitted that there was culpable delay on the part of the respondent which was insufficiently scrutinised by the judge and consequently not sufficiently taken into account when

considering the issue of the passage of time. Although it is accepted that the judge was entitled to find that the appellant had sought to mislead the court, the judge was not entitled to find that the appellant's behaviour had delayed and complicated his prosecution in the Czech Republic.

21. In relation to the forum bar, it is submitted that the judge's determinations relating to some of the specified matters was incorrect. In relation to (a) it is submitted that more harm resulting from the extradition offence was caused in the UK than in the Czech Republic. In relation to (b) it is submitted that the judge was not entitled to conclude that any difficulties which the Czech authorities experienced in questioning BB were caused by the trauma which she suffered as a result of the alleged offence, as opposed to mere reluctance on her part to being a witness in the criminal proceedings. In relation to (d) it is submitted that there was insufficient evidence to entitle the judge to conclude that a trial in the UK as opposed to the Czech Republic would cause extra delay. Likewise, in relation to (e) there was no sufficient evidence to entitle the judge to conclude that the criminal prosecution in the Czech Republic was trial ready, nor that the UK authorities did not already have the necessary evidence to prosecute the appellant arising from their prosecution of JB. Overall it is submitted that as a matter of public policy, those who like the appellant are alleged to have carried out offences in the UK ought to be tried in the UK.

22. In relation to Article 8 it is submitted that the judge carried out only a cursory assessment of the competing factors and his conclusion was against the weight of the factors militating against extradition in particular the length and strength of the appellant's family links in the UK. It is submitted that in any event this court ought now to reassess this issue in the light of the recent evidence from the appellant that his partner is soon to give birth to their twins.

Discussion

23. In relation to the issue of passage of time, section 14 of the Extradition Act 2003 provides that,

> "A person's extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have –
>
> Committed the extradition offence,
>
> ……."

24. It is clear that culpable delay on the part of the requesting state may be of relevance to this issue. As was observed by Laws LJ in *La Torre v Italy* [2007] EWHC 1370,

> "All the circumstances must be considered in order to judge whether the unjust/oppressive test is met. Culpable delay on the part of the State may certainly colour that judgment and may sometimes be decisive, not least in what is otherwise a marginal case (as Lord Woolf indicated in Osman (No 4). And such delay will often be associated with other factors, such as the possibility of a false sense of security on the extraditee's part. The extraditee cannot take advantage of delay for which he is himself responsible (see Lord Diplock in Kakis at 783). An overall judgment on the merits is required, unshackled by rules with too sharp edges."

25. Moreover, guidance on the issue of passage of time, which had been provided in *Woodcock v Government of New Zealand [*2004] 1 WLR 1979, was endorsed by the House of Lords in *Gomes v Government of Trinidad and Tobago* [2009] UKHL 21, namely,

> "First, the question is not whether it would be unjust or oppressive to try the accused but whether ….it would be unjust or oppressive to extradite him (para 20). Secondly, if the court of the requesting is bound to conclude that a fair trial is impossible, it would be unjust or oppressive for the requested state to return him (para 21). But, thirdly, the court of the requested state must have regard to the safeguards which exist under the domestic law of the requesting state to protect a defendant against a trial rendered unjust or oppressive by the passage of time (paras 21 – 22). Fourthly, no rule of thumb can be applied to determine whether the passage of time has rendered a fair trial no longer possible; much will turn on the particular case (paras 14 – 16, 23 – 25). Fifthly, 'there can be no cut-off point beyond which extradition must inevitably be regarded as unjust or oppressive' (para 29)."

26. Although it is not clear what caused the police in the Czech Republic to commence their investigation into the alleged offence, it is notable that BB's prostitution was still continuing into 2011 and it was only a year later, on 15 October 2012, that criminal proceedings against the appellant were initiated by way of a statutory resolution and the appellant was interviewed about the alleged offence on 24 April 2013. Undoubtedly there was a period of delay following that interview until April of 2016 when the appellant was invited to consult the criminal file against him, which he declined to do. However, once again it is notable that by 13 January 2017 the Czech authorities had already prepared an indictment

and a writ of summons for his attendance in the Czech Republic and later that year the EAW was issued on 31 July 2017.

27. It is apparent that a significant period of time has elapsed since the commission of the alleged offence in 2010. However, the appellant was interviewed about the matter in 2013 and thereafter it is reasonable to infer that given the nature of the offence and its international context, its investigation would not have been a straightforward matter and would have taken a significant period of time to complete. Moreover, the existence of the indictment in the prosecution proceedings in the Czech Republic entitled the judge to infer that it was trial ready by January 2017. In these circumstances, there can be no justified criticism of the judge not having determined the existence of culpable delay on the part of the respondent. The fact of the matter is that there was insufficient evidence before him upon which to make such a determination.

28. Furthermore, whether or not the judge was justified in finding that the appellant's behaviour had caused any significant delay or complicated his prosecution, (and in that regard it certainly wouldn't have facilitated it), undoubtedly the judge was entitled to find that the appellant had sought to mislead the court about his knowledge of the proceedings during this period of time. It is apparent that in his 1st witness statement the appellant had sought to give the impression that he had no knowledge about the criminal proceedings until his arrest on 2 October 2018. It was only after the receipt of the further information from the respondent dated 1 November 2018 that the appellant acknowledged that he had been personally served with an invitation to be interviewed by the Czech authorities and even then he stated that he didn't recall that he had been informed that a resolution had been made to commence criminal proceedings against him. Moreover, it was only in the course of giving oral evidence at the extradition hearing that the appellant finally admitted that he had received a copy of the resolution initiating his prosecution at the same time as receiving the invitation to be interviewed.

29. The significance of this, of course, is that unlike his original witness statement in which he claimed that he had no knowledge of the criminal proceedings until his arrest in 2018, it is apparent that he was aware from a relatively early stage that he was under criminal investigation for the alleged offence. Therefore, he cannot have had any sense of security that he was not going to be prosecuted from this time onward; a matter which he appreciated was of sufficient significance, that he sought to cover it up until its exposure in the course of his oral evidence at the extradition hearing.

30. In these circumstances, as it was not suggested (nor realistically could it have been) that there would be any inability for the appellant to have a fair trial due to the passage of time, hence the submission being based on oppression rather than injustice, I am satisfied that the judge was entitled to reach the conclusion that after taking into account the matters upon which he found in favour of the appellant, it was neither oppressive, nor for that matter unjust, to order his extradition.

31. In relation to the issue of forum, section 19B of the Extradition Act 2003 provides that,

> "(1) The extradition of a person ("D") to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.
>
> (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge –
>
> (a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and
>
> (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
>
> …."

The "specified matters" being those set out at [16] above and the relevant activity being defined in section 19B(6) of the Extradition Act 2003 as,

> "….activity which is material to the commission of the extradition offence and which is alleged to have been performed by D…."

32. Having decided that a substantial measure of the appellant's relevant activity had been performed in the UK, the judge was obliged to consider whether his extradition should be barred because it was not in the interests of justice.

33. Guidance as to the extradition judge's approach and that of this court on appeal to the assessment of the interests of justice has been provided by the Lord Chief Justice sitting with Ouseley J in *Lauri Love v USA* [2018] EWHC 172 (Admin) between [22] and [26], (albeit in the context of category 2 territories, hence the forum bar which was being considered was that set out in section 83A, rather than in the present case, section 19B as the Czech Republic is a category 1 territory) as follows,

> "22. In our judgment, section 83A is clearly intended to provide a safeguard for requested persons, not distinctly to be found in

any of the other bars to extradition or grounds for discharge, including section 87 and the wide scope of article 8 ECHR . The safeguard is not confined to British nationals, but it is to be borne in mind that the United Kingdom is one of those countries which is prepared to extradite its own nationals. Its underlying aim is to prevent extradition where the offences can be fairly and effectively tried here, and it is not in the interests of justice that the requested person should be extradited. But close attention has to be paid to the wording of the statute rather than to short summaries of its purpose or to general Parliamentary statements. The forum bar only arises if extradition would not be in the interests of justice; section 83A(1) . The matters relevant to an evaluation of "the interests of justice" for these purposes are found in section 83A(2)(b) . They do not leave to the court the task of some vague or broader evaluation of what is just. Nor is the bar a general provision requiring the court to form a view directly on which is the more suitable forum, let alone having regard to sentencing policy or the potential for prisoner transfer, save to the extent that one of the listed factors might in any particular case require consideration of it.

23. The approach of an appellate court to the evaluation of the section 83A factors also calls for some comment. Mr Caldwell favoured the approach taken in *Celinski v Poland [2015] EWHC 1274* at [18-24], where the Divisional Court concluded, in relation to article 8 cases, that the correct approach for an appellate court was to ask the single question whether or not the district judge made the wrong decision, and to allow the appeal only if the decision was wrong in the way described by Lord Neuberger in *Re B (A Child) (FC) [2013] UKSC 33* . Findings of fact, especially if evidence had been heard should ordinarily be respected. The approach of Aikens LJ in *Shaw v Government of the United States of America [2014] EWHC 4654 (Admin)* , was preferred by Mr Fitzgerald. He held at [42] that the appellate court could interfere with the judge's "value judgement" if there were an error of statutory construction, or if he failed to have regard to a relevant factor or considered an irrelevant one, or if the overall judgment was irrational. Such an error would "invalidate" the judgment and the appellate court "would have to re-perform the statutory exercise and reach its own 'value judgment'".

He continued:

> "43. However, if this court concludes that the DJ has not erred in any one of those respects I have just identified, but simply took the view that it would give a different weight to a particular specified matter from that given to it by the judge below, I very much doubt that this court could therefore conclude that the

> appropriate judge ought to have decided the Forum Bar question before him in the extradition hearing differently: see section 104(3)(a) of the EA . It is possible, but in my judgement, in practice, very unlikely.

24. This was very much the approach adopted in relation to article 8 cases by Aikens LJ and Edis J, in *Belbin v Regional Court of Lille, France [2015] EWHC 149 (Admin)* , which, while approved in *Celinski* , was overtaken by the latter's simpler approach.

25. The statutory appeal power in section 104(3) permits an appeal to be allowed only if the district judge ought to have decided a question before him differently and if, had he decided it as he ought to have done, he would have had to discharge the appellant. The words " ought to have decided a question differently" (our italics) give a clear indication of the degree of error which has to be shown. The appeal must focus on error: what the judge ought to have decided differently, so as to mean that the appeal should be allowed. Extradition appeals are not re-hearings of evidence or mere repeats of submissions as to how factors should be weighed; courts normally have to respect the findings of fact made by the district judge, especially if he has heard oral evidence. The true focus is not on establishing a judicial review type of error, as a key to opening up a decision so that the appellate court can undertake the whole evaluation afresh. This can lead to a misplaced focus on omissions from judgments or on points not expressly dealt with in order to invite the court to start afresh, an approach which risks detracting from the proper appellate function. That is not what *Shaw* or *Belbin* was aiming at. Both cases intended to place firm limits on the scope for re-argument at the appellate hearing, while recognising that the appellate court is not obliged to find a judicial review type error before it can say that the judge's decision was wrong, and the appeal should be allowed.

26. The true approach is more simply expressed by requiring the appellate court to decide whether the decision of the district judge was wrong. What was said in *Celinski* and *Re B (A Child)* are apposite, even if decided in the context of article 8 . In effect, the test is the same here. The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed."

34. The circumstances in which the various specified matters fell to be assessed included the fact that whereas there was information from the respondent that four individuals had already been prosecuted to conviction in the Czech Republic in relation to their involvement in the human trafficking offence, the only evidence concerning what may have happened to JB was to be found in the appellant's 2nd witness statement at [32] namely,

> "I understand from my sister Marie Balogova that she gave evidence against [JB] who is named in the European Arrest Warrant. She has told me that the case related to the physical and sexual abuse inflicted upon her by [JB]. I understand from my sister that she gave evidence against [JB] via video-link from the Czech Republic. I further understand that the matter was heard before Bradford Crown Court and that [JB] was convicted."

35. It appears that counsel acting for the appellant requested the judge to adjourn the extradition hearing to obtain more information regarding what may have happened to JB. However, understandably the judge declined the request, as the appellant had already had the opportunity to obtain evidence concerning this matter and had not done so. Indeed, although I accept that counsel had not informed the court that Marie Balogova was not going to give evidence for "tactical reasons", there is no dispute that she was present at the extradition hearing and could have been called to give evidence about the matter if it had been considered that it would have assisted the appellant's case in relation to this issue. Indeed, if the contents of [32] of the appellant's 2nd witness statement accurately sets out what his sister could have said, this appears to refer to a trial in which she was suggesting that JB had abused her, rather than anything to do with what had happened to BB.

36. In relation to the judge's assessment of the specified matters, it is undoubtedly the case that a significant degree of harm was caused to BB in the UK arising from her being forced into prostitution. On the other hand, the original deception which facilitated her travelling to the UK occurred in the Czech Republic to where she has returned and where she continues to suffer from the psychological effects of the trauma of being trafficked into the UK for purposes of prostitution. Moreover, the harm to the wider community within the Czech Republic from learning of what had taken place cannot be underestimated. These were all matters which the judge was entitled to take into account and I do not consider that his conclusion that substantial harm occurred in both the UK and the Czech Republic can be said to be wrong.

37. As to the interests of BB once again I consider that the judge was entitled to determine that as she has now returned to the Czech Republic, a

prosecution in the Czech Republic rather than the UK would be in her best interests. Firstly, it would appear that the prosecution in the Czech Republic has reached a stage where it is ready for trial, hence the existence of the indictment, whereas there is no evidence that a police investigation concerning the appellant's activities has even commenced in the UK, let alone any decision having been made to prosecute him in this country. Secondly, although it may be that BB could give evidence via a video link if the appellant was prosecuted in the UK, it is likely that any questioning of her would have to be interpreted, whereas if the appellant stands trial in the Czech Republic, her understanding of the procedures would be enhanced and she would be able to be questioned in her own language. Given the psychological trauma that BB continues to suffer as a result of being trafficked, a prompt trial which takes place in a manner which facilitates her understanding is clearly in her best interests.

38. Moreover, I consider that the judge was entitled to infer from the information which had been provided by the respondent, that the difficulties in questioning BB arise from her continuing trauma, rather than mere reluctance on her part to being a witness in criminal proceedings, and that those difficulties would be ameliorated by the trial taking place in the Czech Republic.

39. No point is now taken on behalf of the appellant in relation to specified matter (c) which it is acknowledged is limited to a consideration of any belief by a prosecutor that the UK is not the most appropriate jurisdiction in which to prosecute the appellant in respect of the extradition offence. Not only has no such belief been expressed by any prosecutor, but to the extent that it is relevant, further evidence has been obtained from a search of relevant data bases that there have never been any criminal proceedings against the appellant in the UK.

40. In relation to specified matter (d), there was no information available to the judge indicating that evidence necessary to prove the extradition offence was available in the UK. On the other hand, as the judge fairly inferred, it was likely that such evidence could be made available in due course. In so far as the issue of delay was concerned, this was of more relevance to the specified matter (e), rather than (d). Moreover, there was no information that BB would not have been willing to give evidence before an English court. In these circumstances, it seems to me that the judge has overstated the weight which he attached to this matter.

41. On the other hand, in relation to specified matter (e), I do consider that the judge was entitled to take the view that a trial of the appellant for the extradition offence in the UK would be likely to entail considerable delay as compared to a trial in the Czech Republic. As I have already observed,

the existence of the indictment in the prosecution in the Czech Republic entitled the judge to infer that it was trial ready. Moreover, there was no evidence that a police investigation concerning the appellant's activities has commenced in the UK.

42. In so far as specified matter (f) is concerned, given the information that four other individuals had already been tried and convicted in the Czech Republic in relation to their involvement in the people trafficking offence alleged against the appellant, not only is it desirable for the appellant to be tried in the Czech Republic, but BB now resides there and although she may be enabled to give evidence in the UK with the use of a video-link, for the reasons already discussed above it is clearly preferable that she is able to give her evidence at a court in the Czech Republic. These were all matters which the judge properly determined and his assessment of the strength of this matter was correct.

43. Overall, and save for his overstatement of the weight which he attached to specified matter (d), the judge's approach to the assessment of the interests of justice for the purpose of section 19B of the 2003 Act, cannot be faulted. No doubt those who carry out offences in the UK ought to be tried in the UK. However, although part of the extradition offence took place in the UK, it originated in the Czech Republic where the appellant's alleged deception caused BB to travel to the UK. Moreover, as BB has now returned to the Czech Republic and four others have already been tried and convicted there in relation to their involvement in the extradition offence, there is every good reason why it is not in the interests of justice for the appellant to be prosecuted for the offence in the UK and there is no matter of overriding public policy which would favour the prosecution taking place in the UK rather than the Czech Republic. In this regard, to the extent that as a result of the judge's over estimation of the weight to be given to specified matter (d), a reassessment of the interests of justice is required to be carried out, I am quite satisfied that even on the basis that such evidence could be made available in the UK, bearing in mind the strength of the other matters set out above, it would remain in the interests of justice for the appellant to be prosecuted for the extradition offence in the Czech Republic.

44. The principles applicable to the consideration of Article 8 in the context of extradition proceedings are well known and were expressly referred to by the judge in the course of his decision, as taken from *Norris* [2010] UKSC 9, *HH* [2012] UKSC 25 and *Celinski* [2015] EWHC 1274 (Admin). What of course is required in every case is a close scrutiny of the specific factual matrix applicable to that case including a particular focus upon issues such as delay, the relative seriousness of the extradition

offence and the personal circumstances of the person sought to be extradited and his family.

45. In the present case it would appear that the judge (perhaps through the incautious use of electronically aided editing techniques) has included within the list of factors favouring extradition, the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice. No doubt in an appropriate case, where the person sought to be extradited is a fugitive from justice, this is an appropriate consideration. However, this was not such a case and, in any event, the parties invite this court to reassess this issue in the light of the further evidence relating to the imminent birth of the appellant's twins.

46. It is correct that the appellant has been resident in the UK for a significant period of time, namely since 2010. He is in a relatively long-term relationship, with two young children with two more on the way. Moreover, he is in part-time employment in a car wash. Undoubtedly the extradition of the appellant will have a serious adverse effect not only upon the appellant himself, but upon these other aspects of his life and in particular upon his family; albeit, as the judge found, the appellant's partner is likely to have support from other members of the appellant's family.

47. On the other hand, the extradition offence is one of particular seriousness, the criminality alleged to be involved being contrary to the core values of a civilised society and affecting not only those directly involved but causing more widespread concern amongst the affected communities. Although, it is apparent that a significant period of time has elapsed since the commission of the alleged offence, as the judge found and was entitled to do so, this did not arise from culpable delay on the part of the respondent. Moreover, as the judge found and was again entitled to do so, it is apparent that the appellant was aware from a relatively early stage of the proceedings that he was under criminal investigation for the alleged offence, such that he cannot have had any sense of security that he was not going to be prosecuted from that time onwards; a matter which he appreciated was of sufficient significance that he sought to cover it up until its exposure in the course of the extradition hearing.

48. In these circumstances I am satisfied, as was the judge that, bearing in mind the particular seriousness of the extradition offence, the strength of the public interest in the UK honouring its international extradition obligations is such, that notwithstanding the serious adverse effects upon the appellant and his family, it would not be a disproportionate interference with his Article 8 rights for the appellant to be extradited to the Czech Republic in relation to the present accusation EAW.

Conclusion

49. In the course of his ruling, the judge proceeded to consider the issue of proportionality under section 21A of the Extradition Act 2003 and determined that it would not be disproportionate to order the appellant's extradition. There was no challenge to this aspect of the judge's ruling and having found in favour of the respondent in relation to the issues on appeal, albeit on a revised basis, I too am satisfied that for the reasons provided by the judge, it would not be disproportionate to order the extradition of the appellant to the Czech Republic.