Neutral Citation Number: [2024] EWHC 2229 (Admin)

Case No: AC-2023-LON-002198

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 August 2024

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

IGOR KOPAN	**Appellant**
- and -	
REGIONAL COURT IN CZESTOCHOWA, POLAND	**Respondent**

- -
- -

Martin Henley (instructed by **AM International Solicitors**) for the **Appellant**
Stefan Hyman (instructed by **CPS**) for the **Respondent**

Hearing dates: 14 May 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 29 August 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Julian Knowles:

Introduction

1. This is an appeal by Igor Kopan, the Appellant, with the permission of Fordham J against the order for his extradition made by a district judge sitting at Westminster Magistrates' Court on 13 July 2023.

2. The original grounds of appeal are:

    a. the district judge erred when she concluded that extradition was not barred by reason of the passage of time, under s 11(1)(c) and s 14 of the Extradition Act 2003 (EA 2003);

    b. she was wrong to find that extradition would be compatible with the Appellant's rights under Article 8 of the European Convention on Human Rights (the Convention).

3. The appeal before me was heard in May 2024. Whilst I was considering this case, the Appellant submitted evidence that he has recently (since the hearing) been diagnosed with cancer. It is not necessary to set out the details; suffice it to say that it is a form of cancer which is potentially very serious. Medical investigations are continuing, however the Appellant will likely require significant surgery and chemotherapy thereafter. The Respondent did not oppose the admission of this evidence, and I admit it.

4. For the reasons set out below, this appeal is allowed and the order for the Appellant's extradition is quashed. This was my provisional view after the hearing, which has only been reinforced by the new medical evidence. This judgment is therefore shorter than it might otherwise have been.

Factual background

5. The Appellant's extradition has been sought so he can stand trial for various fraud offences, mainly relating to vehicles. The offences were allegedly committed between 2004 and 2006; in other words, nearly 20 years ago. In my experience, this is at the outer reaches of the sort of time periods for alleged extradition offending.

6. On behalf of the Respondent, Mr Hyman who, if I may say so, prosecuted this case with conspicuous fairness, conceded as follows (and as had been conceded below) (Skeleton Argument, [11]): (a) the Respondent knew in 2007 that the Appellant was in the UK; (b) it could then have issued a European arrest warrant (obviously, the UK then still being a member of the EU) but did not do so; (c) no (European) arrest warrant was issued until 2022: (d) there is no explanation for the delay between 2007 and 2022; (e) the Respondent is responsible for that delay, ie it is 'culpable.'

Discussion

7. Because this a fresh evidence case, the question for me is not whether the district judge was 'wrong', which is the general test on appeal: see *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [22]-[26].

8. Instead, I have to make my own assessment *de novo*, on the material as it now stands, in order to determine whether extradition is barred on one or more of the grounds set out in Part 1 of the EA 2003.

9. The *de novo* test in fresh evidence cases is established by decisions such as *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26]; *Versluis v The Public Prosecutor's Office in Zwolle-Lelystad, The Netherlands* [2019] EWHC 764 (Admin), [79]; and *De Zorzi v Attorney General, Appeal Court of Paris* [2019] 1 WLR 6249, [66].

10. Section 11(1)(c) of the EA 2003 establishes the passage of time bar in cases under Part 1 by reference to s 14. That provides:

> "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—
>
> (a) committed the extradition offence (where he is accused of its commission) […].

11. In *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, 782-3, a case under s 8(3)(b) of the Fugitive Offenders Act 1967 which was in similar terms to s 14, Lord Diplock said that:

> "'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair. Delay in the commencement or conduct of extradition proceedings which is brought about by the accused himself by fleeing the country, concealing his whereabouts or evading arrest cannot, in my view, be relied upon as a ground for holding it to be either unjust or oppressive to return him. Any difficulties that he may encounter in the conduct of his defence in consequence of the delay due to such causes are of his own choice and making. Save in the most exceptional circumstances it would be neither unjust nor oppressive that he should be required to accept them."

12. There is no statute of limitations in relation to extradition, and there is no 'cut-off' point beyond which extradition will, *ipso facto*, be unjust or oppressive. I am not to be taken

as suggesting that there is. However, the acknowledged period of delay in this case, for which the Respondent is responsible, if not unprecedented, is certainly very long indeed.

13. In these circumstances, I am reminded of the words of Henry LJ in *R v Secretary of State ex parte Patel* (1995) 7 Admin LR 56, a case under the Extradition Act 1989, under which the Secretary of State had a broad discretion whether to order extradition. The delay in that case was some years, but nothing like as long as the period in the present case. The Divisional Court allowed the appellant's application for judicial review of the Secretary of State's decision to extradite him. In giving judgment, Henry LJ commented as follows at pp71-2:

> "The reasons for the delay and the consequences of the delay were part of the circumstances that the Minister was bound to have regard to in deciding whether it was just, after all this time, to uproot this citizen and send him to another country to face his trial. In leaving those matters to the foreign court he failed to give sufficient regard to the applicant's rights and to the protection that the extradition process was intended to afford him. In so acting, he failed to take into account matters which the statutory question required him to take into account, and so clearly misdirected himself.
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> The reason he gives for that is that the 'lapse of time' was 'not such as would make it inappropriate' to leave those matters to the American court. We find that quite startling. Of the reported cases only *R. v. Secretary of State for the home Department ex parte Sinclair* ([1992] Imm. AR 293) rivals this case in length of delay. If it is not appropriate in this case for the Minister to consider the reasons for and consequences of such delay, how many years are necessary?
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> Wherever law is practised, justice is reproached by delay. There is a real danger that those of us who have spent a lifetime in the law become enured to delay. So too laymen associate the law with delay, and their expectation of it may harden them to the fact of it. So the years trip off the tongue and so we reach a position where a citizen may be surrendered to face trial in another state for matters at least nine years stale without examination of the reasons for the length of that delay or the consequences of it."

14. I am entirely satisfied that it would be oppressive to extradite the Appellant in light of the culpable delay on the part of the Respondent in this case of nearly 20 years. To put that into perspective, one only needs to consider the changes in one's own life in that time to realise just how long it is in real terms.

15. That was my provisional view at the conclusion of the hearing. Since then, as I have said, the Appellant has become seriously unwell and is likely due for intensive medical

treatment. For that additional reason it would therefore be oppressive to extradite him now.

16. In these circumstances, it is not necessary to consider the other grounds of appeal.

17. For these reasons, this appeal is allowed.