Neutral Citation Number: [2022] EWHC 84 (Admin)

Case No: CO/2240/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

18 January 2022

Before:
MR JUSTICE FORDHAM
- -

Between:

JANIS SPIRGA	**Appellant**
- and –	
PROSECUTOR GENERAL'S OFFICE (LATVIA)	**Respondent**

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- -

Ania Grudzinska (instructed by Hollingsworth Edwards Solicitors) for the **Appellant**
David Ball (instructed by CPS) for the **Respondent**

Hearing date: 14/12/21
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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. This is an extradition appeal on Article 8 ECHR grounds. The hearing was in-person. The Appellant is aged 47 and is wanted for extradition to Latvia. That is in conjunction with an accusation Arrest Warrant, issued on 1 July 2014 and certified by the National Crime Authority ("NCA") on 26 February 2021, on which latter date the Appellant was arrested. Extradition was ordered by DJ Godfrey ("the Judge") on 22 June 2021, after an oral hearing on 1 June 2021 at which the Appellant and his partner both gave oral evidence. Permission to appeal was granted on the papers by Jay J for this reason:

> ***Given the nature of the offending and the length of time that has elapsed since it has occurred, I am persuaded that the Appellant should have the opportunity of demonstrating to the Court at a substantive hearing that the [Judge's] decision was wrong.***

Love-26

2. The Judge carried out the requisite Article 8 'balancing exercise' and concluded that the public interest factors in favour of extradition outweighed the combined effect of the various features counting against extradition. Ms Grudzinska, for the Appellant, criticises the Judge for his treatment of relevant features of the case. Her submission, in essence, is that the Judge significantly "underplayed" certain "crucial factors" and, as a consequence, reached the "wrong" overall outcome as to the Article 8-compatibility of extradition. As both Counsel recognised, if this appeal is to succeed it would be on the basis described by the Divisional Court in Love v USA [2018] EWHC 172 (Admin) at §26 ("Love-26"):

> ***The appellant 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.***

It is Love-26 which frames the essential question arising on this appeal.

'Working illustration' cases

3. In her written and oral submissions, Ms Grudzinska drew my attention, in particular, to two 'working illustration' cases from the Article 8 extradition case law. The first is the decision of the Supreme Court (20.6.12) in F-K v Poland – one of the appeals dealt with in HH v Italy [2012] UKSC 25 [2013] 1 AC 338 – overturning the judgment of Ouseley J (19.1.12) [2012] EWHC 25 (Admin) and finding the extradition of Mrs F-K to be incompatible with Article 8. The second is the decision of Ouseley J himself (1.11.13) in Podolski v Poland [2013] EWHC 3593 (Admin), finding the extradition of Mr Podolski to be incompatible with Article 8. In each of these cases, the requested person was a fugitive. Ms Grudzinska, rightly, recognises that Article 8 cases are intensely fact-specific. But I have found it helpful to be shown these two 'working illustrations'.

4. In the F-K case (20.6.12), extradition was found to be incompatible with Article 8. These, as I see it, were the key features. The alleged index offending involved misappropriation of clothing, falsifying of customs documents and instances of fraud, between 1997 and 2001 (see HH at §36). Mrs F-K had left Poland in June 2002 as a fugitive (§37). Domestic Polish arrest warrants had been issued in January 2003, April 2003 and March 2004 (§38). Requests for extradition European Arrest Warrants

(EAWs) were made in December 2005 and April 2007, and EAWs were issued in January 2006 and July 2007, certified in April 2008 and September 2008, and Mrs F-K was subsequently arrested in March 2010 (§39). Lady Hale described the delay as "considerable", including some delay between the index offences and the bringing of Polish prosecutions, further delay between Mrs F-K's failure to attend court in Poland and the issue of domestic arrest warrants, and further delay before requests for the EAWs and between the EAWs and arrest in the UK (§46). Lady Hale said that "whatever the reasons" that chronology did not "suggest any urgency about bringing the appellant to justice" which was "also some indication of the importance attached to her offending" (§46). Lord Hope referred to "conspicuous delay on the part of the prosecuting authorities" (§91) and Lord Judge CJ said that the prosecuting authorities had "been dilatory in the extreme" (§133). All of that was said, in the context of Article 8, notwithstanding the unimpeachable finding of Mrs F-K's fugitivity. The extradition of Mrs F-K to Poland was held to be disproportionate, overturning Ouseley J's contrary conclusion as wrong, having regard to the passage of time and the following further features of the case. Mrs F-K was the primary carer to children, the three youngest of which were aged 13, 8 and nearly 4. Her extradition would have a severe impact in particular on the two younger children (§44), those children being described in a report of a clinical psychologist as likely to be devastated by the loss of their mother and very likely to have severe detrimental consequences psychologically and for their developmental trajectories. Mrs F-K's husband would have to give up work to look after the children which was "likely to lead to severe and crippling depression" (§41). The index offending was "by no means trivial" but nor of great gravity (§45). The public interest in returning Mrs F-K to Poland was not so great as to justify the severe harm that this would cause to the two youngest children, in the context of relatively minor and not seriously criminal offending, and of the conspicuous delay (§91). The damage to the interests of the two youngest children was wholly disproportionate to the public interest in her extradition (§133).

5. In the Podolski case (1.11.13), extradition was found to be incompatible with Article 8. These, as I see it, were the key features. A 2-year custodial sentence, originally suspended for 4 years, had been imposed in Poland in October 2002 for index offences of theft and burglary committed by Mr Podolski in 2000 and 2001 (§1), aged 21 (§2). That was 12/13 years before the Ouseley J's judgment on the appeal. Mr Podolski was now aged 33 (§7). He had remained in Poland for a further 3 years, before leaving in 2005 (§2), having effected "partial compliance" with (§10) – but not having completed (§3) – the community work which was a condition of the suspended sentence. It was "clear" that he had left Poland as a "fugitive" (§6). He had paid the compensation which had been another condition of the suspended sentence (§§2, 9). An EAW had been issued in 2008 and certified in 2012 when Mr Podolski's whereabouts had become known to the NCA (§3). He had now been in the UK for 8 years (2005-2013), in a relationship with his partner for 6 years, and together they had a 5-year-old child (§4). He had a UK conviction for driving while under the influence of alcohol and while uninsured, and for failing to surrender, for which he had received a non-custodial sentence (§4). He had not offended since 2007, which was a "very significant change" in the lifestyle of a "young person" (§8). Extradition would mean a loss of employment for the partner, who would not be able to afford the child's nursery fees (§5), and "consequent impoverishment" (§10). Looking at the features of the case "in the round" (§10) – the length of time, the age of Mr Podolski at the time of the offending, the

change in circumstances, the impact, the partial compliance and the payment of compensation (§11) – extradition was disproportionate.

The present case

6. In the present case, the Appellant came to the United Kingdom from Latvia on 20 April 2006, aged 31. The Judge unassailably found that he did so as a fugitive. The alleged index offending (to which the Warrant relates) took place on 24 January 2005 and 22 May 2005. It constituted the alleged theft of two work laptops, which the Appellant pawned (as he accepts), when he was aged 30. He was arrested in Latvia in conjunction with that index offending on 5 January 2006. He was questioned on 11 January 2006. He was then released on bail. The theft offences are said each to attract a maximum custodial sentence of two years. A decision to prosecute the Appellant was made on 13 January 2006 and he was subsequently summoned on 6 April 2006. When he failed to engage – in circumstances where he accepts that he knew there were legal proceedings and feared a lengthy custodial sentence – a domestic arrest warrant was issued in Latvia on 26 April 2006, by which time he had already fled and (unknown to the Latvian authorities) had come to the UK. At the time of the first alleged index offence (24 January 2005) the Appellant had been the subject of a 3-year suspended sentence imposed by the Latvian criminal Court on 27 October 2004 and suspended for a period of 18 months. That means, if convicted of the index offending, the Appellant would fall to be sentenced in light of having committed the first offence during the currency of the 3-year suspended sentence, and the 3-year suspended sentence may be activated, in whole or in part.

7. Ms Grudzinska emphasises the position in relation to the following topics in particular: delay and the passage of time; the unexplained delay by the NCA in certifying the Warrant; the Appellant having been living openly in the UK; the Appellant's total rehabilitation from his former gambling; his valued role at his work where he is responsible for maintenance and refurbishment at a primary school; the absence of any criminal convictions in the 15½ years in the UK; the background and context of the index offending, having included gambling and mental illness; his payment of compensation in full to the former employer for the loss of the laptops, so that the wrongdoing is "entirely corrected"; the impact of extradition on the family members, including the impact on the Appellant's long-standing partner; in particular, the impact on the partner's 7 year old daughter whose father died in 2017 and whose co-carer the Appellant is; and the impact on her 18 year old daughter, with mental health difficulties and who faces an inability to afford college fees if the Appellant is extradited.

8. The delay and passage of time arise in the context where – as I have explained – the Appellant fled Latvia in April 2006, knowing about the legal proceedings and in fear of a custodial sentence if convicted. There can be no possible criticism of the promptness of the procedural steps taken in Latvia in early 2006, including the promptly issued domestic arrest warrant on 26 April 2006. Further information from the Respondent (19.4.21) describes regular steps being taken to search for the Appellant, including by questioning his family members in Latvia: in July 2007; in July 2008; in February 2012; in May 2012; in December 2013; and in January 2014. The extradition Arrest Warrant was then issued on 1 July 2014. It was not certified, and the Appellant was not arrested on it, until 26 February 2021. Ms Grudzinska submits that there is here unexplained delay of a nature which falls to be characterised as "culpable" and "dilatory", and from which it can be said that there was "no great urgency". Ms

Grudzinska reminds me – as the Judge recorded – that, even in a fugitivity case, the passage of time has the two consequences which Lady Hale identified in HH at §8(6): tending to diminish the weight to be attached to the public interest; and tending to increase the impact on private and family life. In the present case, the impacts and implications of extradition arise in this case in the context of a passage of time of 15½ years between issue of the Latvian domestic warrant and the Appellant's arrest, and a passage of time of 16½ years when it is calculated from the dates of the alleged index offending. During that lengthy period, the features of private and family life picture have arisen. The Appellant has been in the UK for 15½ years since April 2006, with no criminal convictions.

9. In 2014, knowing that these matters remained outstanding against him, the Appellant instructed lawyers in Latvia to make contact with the former employers and to pay compensation for the former employers' loss of their laptops. There is evidence that the court file in Latvia records confirmation having been sent by the former employers to the Latvian court on 16 and 17 June 2014 stating that they had received compensation and no longer maintained any application for compensation. There is also evidence that, at a hearing in Latvia on 6 October 2020, the Latvian court was informed of the compensation payment, by a lawyer acting as defence lawyer for the Appellant.

10. The Appellant's relationship with his partner began 4 years ago in 2017, when her three children were aged 24, 14 and 4. The Appellant has cohabited with them since then. The three children are now aged 28, 18 and 7. The partner had come to the UK from Lithuania in November 2009 as a single parent to the two older children (then aged 16 and 6). The Appellant's current employment at the primary school began in August 2018 and is the subject of a reference which describes him as a highly skilled workman who has been of exemplary character, consistently displaying honesty in all endeavours, with faultless behaviour and conduct. The youngest daughter (now 7), whose father committed suicide in 2017, has health difficulties. These include an abnormally fast heart rhythm for which she has received treatment, a squint and also hearing difficulties. The partner's evidence – which the Judge accepted – described: how the Appellant is very close to the youngest daughter, picking her up from school which the partner cannot do because collection time clashes with the hours which the partner works at a warehouse; how the Appellant's arrest in the extradition proceedings had led to the 18 year old daughter relapsing into depression which she had previously suffered in connection with her stepfather's death in 2017; how the Appellant and the partner share all the bills and have taken out a car loan; and that the partner will be unable to afford the car or the 18 year old daughter's tuition fees at college without the Appellant's income.

11. It is in all these circumstances that Ms Grudzinska submits that extradition would be a disproportionate interference with the rights of the Appellant and members of the family, including the partner, the 18-year-old daughter and the 7-year-old daughter. Compensation was paid to the victims 7 years ago, in 2014. The alleged index offending is now more than 16 years ago. There was – she submits – unexplained, inexcusable (and thus "culpable") delay and "dilatory" action by the prosecuting authorities between 2006 and 2014, and by them and the NCA between 2014 and 2021. Although the index offending is "not trivial", although the Appellant was not a "young person" at the time of it, and although it arose against the backcloth of the previous 3-year suspended sentence, the index offending is nevertheless "not the most serious". The context was a

serious gambling problem, and a background of mental health problems which had included serious depression. There has been a complete turnaround in the Appellant's life and conduct. He has no convictions in the 15½ years in this country. He has an impeccable reference from his employer. The impact will be devastating for the 7-year-old, whose father the Appellant has been since she was aged 4. She and her mother and older siblings will suffer the serious impacts of extradition, and consequential serious impoverishment including the inability to pay for the car loan and for the college fees. Viewed "in the round", this is a case where extradition would be disproportionate and the damage to the interests – in particular of a young child – wholly disproportionate to the public interest in extradition, with the reduced weight attributable to the very lengthy passage of time, in the context of the unexplained and very significant delay.

Discussion

12. I do not accept that the Judge was "wrong" in the sense described in Love-26. I do not accept that extradition in this case would involve a breach of Article 8 rights of the Appellant, or of any or all members of the family. I will explain why.

13. The starting point is that the alleged index offending involves two separate offences of the theft of work laptops, in the context of employment. They were committed at the age of 30. Moreover, they followed in close proximity to a custodial sentence of 3 years imprisonment, which the Latvian court had suspended for 18 months. It was during that suspension period that the first alleged index offence was committed. The Latvian authorities wish the Appellant to face justice in Latvia in relation to these matters. These are features of significance in support of extradition.

14. The Latvian authorities cannot, as I have explained, justifiably be criticised for the action that they took in initially investigating and prosecuting those matters. Knowing of the proceedings and fearing a lengthy custodial sentence, including the activation of the suspended sentence, the Appellant promptly fled Latvia as a fugitive in April 2006. In his evidence, he said he moved to the UK "because I knew I had to disappear due to the potentially long prison sentence". Although the Judge fairly described the Appellant as "less responsible" for the passage of time since April 2006, he has been a fugitive ever since coming here then. After the issue of the domestic arrest warrant on 26 April 2006, various steps were taken by the Latvian authorities between 2007 and 2014. On the further information (19.4.21) that included questioning the Appellant's relatives in Latvia, who claimed that they did "not know his current whereabouts". It is right that the Appellant later paid compensation to the victims (his former employers) in 2014, and that they told the Latvian court about that payment of compensation in June 2014. It is noteworthy that the extradition Arrest Warrant was issued the following month, in July 2014. It is not said, by or on behalf of the Appellant, that in 2014 the Latvian authorities were given, or had, information as to his whereabouts. The July 2014 extradition Arrest Warrant on its face stated that his residence and address were "not known" to the Latvian authorities. It is also right that a lawyer acting on the Appellant's behalf informed the Latvian court about the payment of compensation, at a hearing on 6 October 2020. It is noteworthy that certification by the NCA and the Appellant's arrest then followed on 26 February 2021.

15. It is right to describe the passage of time since 2006, and since the index offending of 2005, as significant. It is also fair to say that the passage of time does not indicate "any great urgency" on the part of the Latvian prosecuting authorities to proceed to the

extradition Arrest Warrant (which they did in July 2014), culminating eventually in arrest in the UK in February 2021. Furthermore, it is fair to say that the passage of time between July 2014 and February 2021 – itself considerable – is not explained by reference to specific actions of the authorities in Latvia, in the UK or elsewhere. However, even if characterised as "culpable" and "dilatory", even if operating materially to reduce the weight of the public interest considerations in favour of extradition, and even taking full account of the fact of payment of compensation to the former employers who were victims of the index offences, the public interest considerations in support of extradition – in my judgment – remain substantial. The Appellant, in his 30s, evaded responsibility for a substantial custodial sentence in Latvia. He took steps to "disappear". Everything that has been built since then has been built on the sand of his fugitivity and his evading of his responsibilities. The public interest considerations in favour of extradition remain weighty. They relate to the Appellant facing his responsibilities; to the UK honouring its extradition obligations; to the courts of this country respecting the prosecutorial decisions of the Latvian authorities; and to the public interest value in the United Kingdom not being (or being seen as) a 'safe haven' for those who seek to avoid their responsibilities as fugitives from criminal justice.

16. The turnaround in the Appellant's life, during the passage of time – including his long period with no convictions in the UK, his excellent standing and employment here, the 2014 payment of the compensation and the rehabilitation from the serious gambling problem in his 30s in Latvia – are significant features. The family relationships are significant. The welfare of and impact of the Appellant's extradition on the partner and of the children, including the 18-year-old daughter and in particular the 7-year-old daughter, are especially important. However, on that feature of the case, it is relevant to have in mind the background and context. The partner had come to the United Kingdom in November 2009, as a single parent from Lithuania, with the two oldest children (6 and 16). Her third child had been born in December 2013. The Appellant did not feature in their family life until 4 years ago, in 2017. It is significant that the Appellant came into their lives in circumstances where the youngest child was suffering from having just lost her father, and the middle child her father-figure, after his suicide. The impacts for the family members of extradition are undoubtedly significant. And, as the Judge explained, the interests of the youngest daughter "are a primary consideration". But as the Judge also, unimpeachably, concluded: she "will not be left without a parent" and, "though I do not suggest it will be easy", her mother "will manage as a single parent, as she has done in the past".

17. In my judgment, the features capable of weighing against extradition do not lead to the conclusion that the Judge's evaluative judgment was "wrong" in the sense described in Love-26. I have been able to trace the key aspects of this case within, and through, the Judge's carefully reasoned judgment, which then informed the Judge's careful 'balance sheet' exercise and evaluation of proportionality. When I stand back, I cannot say that the question of Article 8 proportionality of extradition ought to have been decided differently because the overall evaluation was wrong, because crucial factors should have been weighed so significantly differently as to make the decision wrong. For all those reasons, the appeal is dismissed.