Neutral Citation Number: [2024] EWHC 3032 (Admin)

Case No: AC-2022-LON-002704

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

**IN THE MATTER OF AN APPEAL UNDER**
**SECTION 26 OF THE EXTRADITION ACT 2003**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 November 2024

**Before** :

**THE HONOURABLE MR JUSTICE MURRAY**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

**GRZEGORZ KOZUBAL**

**Appellant**

**- and -**

**REGIONAL COURT IN RZESZÓW, POLAND**

**Respondent**

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**Jake Taylor** (instructed by **Sperrin Law**) for the Appellant
**David Ball** (instructed by **CPS Extradition Unit**) for the Defendants

Hearing date: 17 October 2024

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# Approved Judgment

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

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## Mr Justice Murray:

1. The appellant, Grzegorz Kozubal, appeals under section 26 of the Extradition Act 2003 ("the 2003 Act") against the order made by DJ McGarva at the Westminster Magistrates' Court, following an extradition hearing on 5 January 2022, ordering his extradition to Poland pursuant to section 21A(5) of the 2003 Act.

2. DJ McGarva gave his reasons for ordering the appellant's extradition in his judgment dated 5 January 2022, which was handed down on 27 September 2022 ("the Judgment"). The delay in the handing down of the Judgment was due to the failure of the appellant, while on bail, to attend the extradition hearing, as a result of which failure his legal team was professionally embarrassed and withdrew. The hearing took place in the appellant's absence. The district judge issued a warrant for his arrest, not backed for bail. He also embargoed the Judgment and directed that it be handed down once the appellant had been arrested and brought before the court.

3. The appellant was subsequently arrested and brought before the Westminster Magistrates' Court on 27 September 2022, at which point the Judgment was handed down on DJ McGarva's behalf by DJ Robinson. The appellant was remanded in custody, until he made a successful bail application on 28 June 2024. He was on remand in custody in connection with the extradition proceedings for a period of over 21 months.

4. The two grounds for which the appellant has permission to appeal are:

    i) whether the district was wrong to conclude that extradition of the appellant would be compatible with the rights under Article 8 of the European Convention on Human Rights (ECHR) of the appellant and his family ("the Article 8 Ground"); and

    ii) whether the district judge was wrong to conclude that extradition would be proportionate under section 21A(1)(b) of the 2003 Act ("the Statutory Proportionality Ground").

*The extradition request*

5. The respondent seeks the appellant's extradition on the basis of an extradition request issued on 31 July 2019, which was certified by the National Crime Agency on 20 October 2021 ("the Arrest Warrant"). The Arrest Warrant seeks the appellant's extradition so that he can stand trial for one count of burglary committed in 2007.

*Background*

6. The Arrest Warrant states that the appellant is suspected of having committed a burglary of a shop on 31 March 2007 in the village of Dąbrowa in the Subcarpathian Province of Poland. He was then 26 years old. He is alleged to have prised open metal security bars covering a shop window, to have got into the shop and to have stolen various items (including beer, cigarettes, razors, lighters, shavers, shaving foams, coffee bags, cold cured meat, chocolate bars, Etopyrina tablets) and some cash. The total value of the items and cash stolen was PLN 2,806, the sterling equivalent of which was noted by the district judge to be £505. There has been no evidence to date in the extradition

proceedings as to the value of any consequential damage caused by the manner in which the shop was entered.

7. According to the further information dated 18 November 2021 provided by the respondent:

   i) The police opened an investigation on 2 April 2007. On 7 December 2011, the police interviewed the appellant's mother, explaining that they wanted to interview the appellant as a suspect. The police were aware that he was in regular contact with his mother. They concluded that he was therefore aware that he was being prosecuted by the public prosecutor's office.

   ii) On 2 January 2012, the public prosecutor in Rzeszów decided to issue a preventive measure in the form of a ban on the appellant's leaving Poland and on issuance of a passport to him. However, the decision was never served on the appellant as he could not be located.

   iii) The police discovered due to an identity check recorded on the Schengen Information System that the appellant was in Tallinn in Estonia on 28 March 2015. He was told in Tallinn that he was being pursued as a suspect by the Polish authorities. He gave his telephone number so that he could be contacted. The Polish police were able to use that number to contact him by telephone and to inform him directly that he was a suspect. He confirmed his personal details but refused to confirm his whereabouts.

   iv) When the appellant's identity was again checked on 7 June 2016 in Teplice in the Czech Republic, he was again informed that he was being pursued by the Polish authorities. On that occasion, he gave as his address his place of permanent residence, but he was not, in fact, staying there then.

   v) A suspect in criminal proceedings in Poland is obliged to notify the authorities of his current place of residence and to inform them about any change of longer than 7 days in the suspect's whereabouts. Normally, a suspect is given written notification of this obligation during an interview in connection with the relevant alleged offence. As the appellant could not be found and therefore could not be interviewed, he did not receive this notification.

   vi) The appellant was believed to have been residing at an unknown address in Poland after the commission of the offence, but in 2018 the Polish embassy in London provided information that he was in the United Kingdom. The public prosecutor then filed a request for a European Arrest Warrant in relation to the appellant with the respondent on 8 July 2019.

8. On 18 October 2021, the appellant was arrested in the United Kingdom in relation to low-level domestic-related criminal damage and on suspicion of possession of amphetamine. The police identified that he was also wanted under a European Arrest Warrant. They provisionally arrested him under the extradition request, and the NCA then certified it, as I have already noted, on 20 October 2021.

9. On 20 October 2021, the appellant was produced at Westminster Magistrates' Court. He pleaded guilty to possession of amphetamine and was fined £80. He did not consent

to extradition. He was subsequently granted bail, and the extradition hearing was listed for 5 January 2022.

10. On 23 December 2021, at a case management hearing, the appellant's solicitors informed the court that they had had no contact with the appellant and therefore they were not able to comply with the direction to provide a proof of evidence or a statement of issues.

*The extradition hearing and the Judgment*

11. As already noted, on 5 January 2022, the extradition hearing took place before the district judge. The appellant did not attend. His legal team were without instructions and withdrew. As no good reason had been put forward for the appellant's absence, the district judge found that it was in the interests of justice for the hearing to proceed. This is not disputed.

12. The district judge had no sworn evidence from the appellant, but he had some basic personal details that had been provided at the first hearing, saying that the appellant was then aged 41, had come to the United Kingdom in 2008, lived with his partner (or wife, as the district judge refers to her later in the Judgment) in Wisbech, had a daughter born in March 2018 (who was in good health), was the main breadwinner for the family, and worked as a self-employed builder.

13. The district judge also had the benefit of the Arrest Warrant, which set out a summary of the alleged offence and the proceedings to date in Poland. The district judge considered, and rejected, various possible bars to extradition.

14. The district judge also considered the evidence regarding fugitivity, in particular from the further information provided by the respondent. The district judge concluded that the appellant was a fugitive. That conclusion is not in dispute. Accordingly, there was no objection to extradition available under section 14 of the 2003 Act.

15. Having considered and rejected the bars to extradition referred to in section 11 of the 2003 Act, the judge determined that he was required by section 11(5) of the 2003 Act to proceed under section 21A.

16. The remaining issues for the district judge were, therefore, those raised under section 21A of the 2003 Act, namely, whether either clause (a) or clause (b) set out in section 21A(1) applies in this case in such a way that the appellant's discharge is required under section 21A(4).

17. Section 21A(1) reads as follows:

> "If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D") –
>
> (a) whether the extradition would be compatible with the Convention rights [of D] within the meaning of the Human Rights Act 1998;
>
> (b) whether the extradition would be disproportionate."

18. Section 21A(4) requires the requested person's discharge if the relevant judge determines that extradition would not be compatible with that person's Convention rights or decides that extradition would be disproportionate. The Convention rights at issue in this case are the appellant's rights under Article 8 of the ECHR.

19. The district judge first considered clause (a) under section 21A. He referred briefly to the relevant authorities. He identified the following factors in favour of extradition:

    i) The offence was "certainly not trivial", involving the theft following a break-in of goods worth around £500 and consequential damage.

    ii) The appellant was a fugitive.

    iii) There is a constant and weighty public interest in the United Kingdom honouring its international treaty obligations.

    iv) There is also a strong public interest in the United Kingdom not being seen to be a safe haven for fugitive offenders.

20. The district judge identified the following factors against extradition:

    i) The offending was not "the most serious" and did not involve violence. It had occurred over 14 years previously, although much of the delay was due to the appellant's having fled Poland as a fugitive.

    ii) The appellant had a child, then three years old, although he was not her sole carer, and she was looked after by her mother. She must be a "primary consideration" of the court, in accordance with the authorities. The district judge had no information about the impact on her of extradition, but he was not aware of any special requirements that she had. The district judge had no reason to conclude that the undoubted impact of extradition would be over and above the impact of extradition in many other cases. This case was not exceptional on its facts.

21. Having weighed these factors, the district judge concluded that extradition would be compatible with the Article 8 rights of the appellant and his family. The constant and weighty public interest in extradition far outweighed the impact on the appellant or innocent members of his family. Even accepting that the offending occurred a long time ago and was not the most serious offending, the appellant's status as a fugitive tipped the balance in favour of extradition.

22. The district judge then considered and dealt briefly with clause (b) under section 21A(1). He noted that the specified matters he was required to take into account in assessing proportionality were the seriousness of the conduct, the likely penalty, and the possibility of less coercive measures being taken. In relation to these matters, he concluded that:

    i) the offending was "more than trivial", involving damage to property and a loss of over £500;

    ii) the maximum sentence available in Poland would be 10 years' imprisonment and "custody would be within the sentencing range in England"; and

iii) given the lack of cooperation by the appellant, including his non-attendance at the extradition hearing, less coercive measures were not appropriate.

23. The district judge determined that extradition would be proportionate. He ordered the appellant's extradition to Poland under section 21A(5) of the 2003 Act.

*Subsequent procedural history*

24. On 10 August 2022, the appellant was arrested in Peterborough for domestic matters. He was remanded in custody for those matters, and the Judgment was not handed down until they were concluded.

25. On 16 August 2022, the appellant was produced before the Westminster Magistrates' Court. Bail in the extradition proceedings was revoked.

26. On 21 September 2022, the appellant was convicted at Peterborough Magistrates' Court for possession of class A drugs and fined £100. He was remanded in custody in relation to the extradition proceedings.

27. On 27 September 2022, the appellant was produced before the Westminster Magistrates' Court and, as already noted, DJ Robinson handed down the Judgment on behalf of the district judge. The appellant's extradition to Poland was ordered. He was again remanded in custody.

28. On 3 October 2022, the appellant lodged his appeal against the extradition order, with his provisional grounds of appeal. Perfected grounds of appeal were not lodged by the deadline or subsequently.

29. On 28 October 2022, the respondent lodged a respondent's notice, with its submissions opposing the appeal.

30. On 1 May 2023, on a review of the papers, Sir Duncan Ouseley, sitting as a High Court Judge, refused permission to appeal.

31. On 5 May 2023, the appellant renewed his application for permission to appeal and filed renewal grounds.

32. On 7 December 2023, Morris J granted permission to appeal at an oral hearing.

33. The appeal was originally listed for 27 June 2024 but had to be relisted for lack of an available judge to hear it.

34. On 28 June 2024, the appellant's application for bail, on which the respondent was neutral, was granted, with bail conditions requiring daily reporting and a curfew from 11:00 pm – 1:00 am. At that point, the appellant had been in custody in relation to the extradition proceedings for a period of 648 days (a period of over 21 months), comprised of two periods:

i) 18 to 20 October 2021 (two days), following his arrest and initial grant of bail at the Magistrates' Court; and

ii) 21 September 2022 to 28 June 2024 (646 days), having been remanded in custody in relation to the extradition proceedings, as I have already described.

*Legal principles*

35. The court's powers on an extradition appeal under section 26 of the 2003 Act are set out in section 27, which provides that the court may allow the appeal if the court is satisfied that either (i) or (ii) is true, namely:

i) the district judge ought to have decided a question before him differently, and had he done so, he would have been required to order the requested person's discharge; or

ii) an issue is raised that was not raised at the extradition hearing, or evidence is available that was not available at the extradition hearing, and that issue or evidence, had it been before the district judge, would have resulted in the district judge answering a question before him differently such that he would have been required to order the requested person's discharge.

36. The general test on appeal is whether the district judge's decision was wrong, namely, whether the district judge erred in such a way that he ought to have answered the statutory question differently: *Love v United States of America* [2018] EWHC 172 (Admin), [2018] 1 WLR 2889 (DC) at [22]-[26]; and *Surico v Italy* [2018] EWHC 401 (Admin) at [30]-[31].

37. As noted by Julian Knowles J in *Kozar v Czech Republic* [2024] EWHC 2226 (Admin) at [14], where he sets out the relevant authorities, the foregoing is modified in a case involving fresh evidence or a relevant change of circumstances, such that the appellate court is required to make its own assessment *de novo* as to whether extradition is barred on any one or more relevant ground available under Part 1 of the 2003 Act.

38. In this case, there is no application to adduce fresh evidence. There is in the appeal bundle a "supplemental proof" (although no primary proof is included in the appeal bundle or was available to the district judge at the extradition hearing). This document purports to have been made by the appellant, although the copy in the appeal bundle is unsigned and undated. In view of the lack of an application to adduce it as new evidence, I have considered it only *de bene esse*. It is clear that it would not satisfy the conditions in section 27(4) of the 2003 Act for the admission of new evidence on appeal, as no ground is put forward as to why this evidence could not have been made available to the district judge. It has not been tested by cross-examination. It can be given little weight. It therefore could not be considered decisive as required by section 27(4) and the guidance in *Hungary v Fenyvesi* [2009] EWHC 231 (Admin), [2009] 4 All ER 324 (QBD).

39. There is, however, a significant change of circumstances since the extradition hearing that I am obliged to take into account when considering both grounds of appeal, namely, the amount of time that the appellant has spent on remand in custody in relation to the extradition proceedings. This requires me to consider, in addition to any alleged error made at the time of the extradition hearing by the district judge, whether the district judge, if he were considering the appeal now, would have decided a relevant question differently such that he would now be required to order the appellant's discharge. The

relevant questions in this case are, for purposes of the appeal, the Article 8 Ground and the Statutory Proportionality Ground.

40. I set out other relevant legal principles below in my consideration of each of the two grounds of appeal.

*The Statutory Proportionality Ground*

41. I will first consider the Statutory Proportionality Ground. Section 21A makes clear that a judge determining proportionality may only take into account the matters specified in section 21A(3) and may do so only to the extent that "the judge thinks it appropriate to do so". The three factors specified in section 21A(3) are:

> "(a) the seriousness of the conduct alleged to constitute the extradition offence;
>
> (b) the likely penalty that would be imposed if D was found to be guilty of the extradition offence;
>
> (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D."

42. The leading authority on the proper interpretation of section 21A(1)(b) of the 2003 Act is *Miraszewski v Poland* [2014] EWHC 4261 (Admin), [2015] 1 WLR 3929 (DC). Giving the judgment of the court, Pitchford LJ considered, among other things, the relevance to the determination to be made under section 21A(1)(b) of the guidance issued by the Lord Chief Justice in *Practice Direction (Criminal Proceedings: Various Changes)* [2014] EWCA Crim 1569, [2014] 1 WLR 3001, which was issued under section 2(7A) of the 2003 Act ("the Guidance"). The Guidance is now found in Part 12 (Extradition) of the *Criminal Practice Directions* 2023 at paragraph 12.2. The Guidance describes categories of offence, in relation to which a judge would generally determine that, in the absence of exceptional circumstances, extradition would be disproportionate. Although all offences that attract a criminal penalty are, by reason of that fact, serious, one might describe the offences referred to in the Guidance as "trivial" for extradition purposes. One such category would be minor theft (which is not robbery, burglary, or theft from a person), such as the theft of an item of food from a supermarket.

43. Swift J confirmed in *Vascenkovs v Latvia* [2023] EWHC 2830 (Admin) at [16]-[20] and [24]-[27] that *Miraszewski* remains good law in relation to the proper interpretation of section 21A(1)(b) of the 2003 Act, notwithstanding the departure of the United Kingdom from the European Union. In *Vascenkovs*, Swift J stated that this court, when considering an appeal from a district judge's conclusion on proportionality for the purposes of section 21A(1)(b), should take the same approach as is proper for other proportionality issues, namely, the approach set out by Lord Neuberger in *Re B (A child) (Care proceedings: threshold criteria)* [2013] UKSC 33, [2013] 1 WLR 1911 (SC) at [90]-[94].

*Submissions*

44. On behalf of the appellant, Mr Jake Taylor submitted that *Miraszewski* at [28] and [32] and *Kozar* at [58] make clear that "non-serious" or "trivial" offences for extradition purposes are not limited to those set out in the Guidance. Although the extradition offence in this case, being a burglary, is excluded from the Guidance, it is an offence that is, comparatively, at the low end of the range of seriousness. Moreover, the appellant has already served over 21 months on remand in custody, which far exceeds any sentence that he would be likely to receive for this offence in Poland, as far as that can be assessed by comparison to the sentence he would receive from a domestic court for offending of this kind. As there is no evidence that less coercive measures are available, that factor is neutral. Accordingly, extradition would be disproportionate. The appellant should be discharged.

45. On behalf of the respondent, Mr David Ball submitted that the district judge had found that the alleged offence was "not the most serious and does not involve violence" but, nonetheless, was "certainly not trivial". The judge was entitled to treat the alleged offence as sufficiently serious to justify extradition. While the respondent accepted that the appellant would be unlikely to get a sentence in excess of 21 months for this offending in the United Kingdom, *Miraszewski* at [39] makes clear that there are circumstances where the public interest in extradition remains despite the likely penalty being non-custodial. Mr Ball submitted that this is such a case in light of the appellant's conduct over a period of many years in seeking, as a fugitive, to evade trial for the alleged offence. The appellant should not benefit from his conduct in failing to comply with court orders. Accordingly, extradition would be proportionate. The district judge's decision should be upheld.

*Discussion*

46. In my view, the district judge's approach to this question was clearly correct on the information before him. His analysis of the three factors set out in section 21A(3), expressed succinctly, cannot be said to be wrong.

47. There has, however, been an important change in circumstances since the extradition hearing on 5 January 2022, namely, the appellant's remand in custody for a period of over 21 months from 21 September 2022 to 28 June 2024.

48. In my view, if this fact had been before the district judge at the extradition hearing, he would have found that extradition was disproportionate for purposes of section 21A(1)(b), notwithstanding the appellant's conduct as a fugitive, and therefore he would have been required to order the appellant's discharge under section 21A(4)(b). I reach this view for the following reasons.

49. In relation to factor (a) of section 21A(3), the seriousness of the conduct, the district judge was entitled to conclude that the offence was "certainly not trivial". I am certain that this matter was not trivial for the complainant shopkeeper. A significant number of separate items was stolen, amounting to over £500 in value. The shopkeeper will no doubt have been put to additional expense repairing the damage to the security bars over the window through which the relevant offender (whether or not it was the appellant) entered the shop. But within the range of seriousness of offences falling within this category of offence, this instance would fall at the lower end. I have already

indicated that, in my view, the judge was correct to find that the offence was sufficiently serious that, having regard to the seriousness of the conduct and the likely penalty as assessed at the time of the extradition hearing, extradition was proportionate.

50. In relation to factor (b) of section 21A(3), the likely penalty, the only information from the respondent that we have about the likely length of sentence is that the maximum sentence for this category of offence is 10 years' custody. Given the range of factual scenarios falling into this category of offence, the statutory maximum sentence is of little guidance: compare *Miraszewski* at [36]. We need to assess the seriousness of the conduct in order to reach a view about the likely penalty.

51. In the absence of sufficient information from the respondent regarding the likely sentence in Poland, the court is entitled to have regard to domestic sentence practice to make an assessment of the penalty that is "likely". It is, of course, not possible to do this with the rigour, detail and nuance of a domestic sentencing. It is a high-level, indicative exercise. The end result is not, of itself, determinative of the outcome of the proportionality exercise. It is simply a factor to be considered in accordance with section 21A(2).

52. Having regard to the Sentencing Council guideline for a non-domestic burglary:

    i) Based on the limited information available from the respondent about the alleged offence, there are no factors indicating high or lower culpability. Accordingly, it is reasonable to conclude that the alleged offence would fall into culpability category B (medium).

    ii) As to harm, although there is no information that the offence involved any threat or use of violence against a person or any physical or psychological injury or other relevant impact caused to a person, it is fair to assess a financial loss of over £500 to a shopkeeper in respect of a village shop as "moderate damage" rather than as of "low value" to the shopkeeper. Also, it is more likely that the damage caused to the security bars on the window was "moderate damage or disturbance to property" rather than "limited damage or disturbance to property". It would appear, therefore, that the alleged offence would fall into harm category 2.

    iii) As a category 2B offence, the starting point under the guideline would be six months' custody, with a category range of a medium-level community order to one year's custody. There would appear to be no aggravating factors. There is no information that the appellant had any previous convictions at the time of the offence.

    iv) Broadly speaking, therefore, the likely penalty would be no more than a year's custody.

53. The appellant has spent more than 21 months on remand in custody, which is roughly the equivalent of having served half of a sentence of three and a half years' imprisonment.

54. As noted by the district judge, the possibility of less coercive factors does not arise in this case. Given the appellant's failure to cooperate with the Polish authorities in relation to the investigation, less coercive measures would not be appropriate.

55. Without regard to the appellant's conduct as a fugitive, which is responsible for much, if not most, of the delay in this matter, it would plainly be disproportionate to extradite him to Poland given the time he has spent on remand in custody, absent other relevant considerations.

56. Mr Ball submitted that the appellant might well have to serve a substantial period in custody in light of his conduct in fleeing Poland to avoid prosecution and actively avoiding cooperating with the Polish authorities, including, for example: (i) his refusal in 2015 to reveal his whereabouts to the Polish authorities when he was contacted directly by them by telephone while in Tallinn; and (ii) his giving a false address in 2016 when he was stopped for an identity check by the Czech authorities in Teplice and informed that he was being pursued by the Polish authorities in respect of the burglary of a shop in the village of Dąbrowa.

57. Unfortunately, we have no information from the respondent as to the extent to which the appellant's sentence, were he to be convicted of the burglary, would be aggravated by his failure to surrender to the Polish authorities and his conduct as a fugitive over a period of many years. Having regard to domestic sentencing practice and the Sentencing Council guideline on failure to surrender, treating this case as falling into the highest categories for culpability ("deliberate attempt to evade or delay justice") and harm ("substantial delay and/or interference with the administrative of justice"), the starting point for sentence would be six weeks' custody with a range of 28 days to 26 weeks' custody. Ordinarily such a sentence would be made consecutive to a sentence for the principal offence(s), with, if necessary, an adjustment for totality.

58. Having regard to these considerations, it appears that the likely penalty in Poland if the appellant were convicted of the burglary would still not be custodial in light of the appellant's period on remand in custody, even aggravating the principal sentence for his years and conduct as a fugitive.

59. Mr Ball submitted that extraditing the appellant would provide appropriate supervision of him by the Polish authorities, would help the appellant to understand the importance of complying with court orders, and would avoid the appellant's having profited from his breach of court orders in Poland.

60. More generally, Mr Ball submitted, there is the policy consideration that a requested person should not be able to evade the jurisdiction of the requesting state and then, in effect, serve his sentence on remand in custody in the executing state, effecting a transfer of sentence by informal means. Finally, there is the policy consideration that the appellant should not, by the means he has deployed, avoid having a criminal conviction for burglary if that would be the result of a fair trial in Poland were he to be extradited.

61. I have considered all these matters. Having regard to all the relevant facts and circumstances of this case, I am nonetheless driven to the conclusion that I have already stated, namely, that the district judge, faced with the fact of the appellant's having been remanded in custody for over 21 months in connection with these extradition

proceedings, would have decided that extradition would be disproportionate in light of the likely penalty that would be imposed on him if he were found guilty of the extradition offence. He would therefore have been required to order the appellant's discharge.

62. The appeal therefore succeeds on the Statutory Proportionality Ground.

*The Article 8 Ground*

63. In view of my conclusion on the Statutory Proportionality Ground, it is not necessary to consider the Article 8 Ground.

64. I will simply observe that, in my view, the district judge's conclusion on whether extradition would be compatible with the Article 8 rights of the appellant and his family was not wrong having regard to the state of the evidence and the circumstances of the case at the time of the extradition hearing.

*Conclusion*

65. For the reasons I have given, I allow the appeal, quash the order for the appellant's extradition, and order his discharge under section 21A(4)(b) of the 2003 Act.