



*Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10.30 am 06/07/2020. A copy of the judgment in final form as handed down can be made available after that time, on request by email to the [administrativecourtoffice.listoffice@hmcts.x.gsi.gov.uk](mailto:administrativecourtoffice.listoffice@hmcts.x.gsi.gov.uk)*

Neutral Citation Number: [2020] EWHC 1772 (Admin)

Case No: CO/3594/2019

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Monday 6<sup>th</sup> July 2020

**Before :**

**THE HONOURABLE MR JUSTICE LEWIS**

-----  
**Between :**

**HARRY CLARKE**  
**- and -**  
**THE HIGH COURT OF IRELAND**

**Appellant**

**Respondent**

-----  
**Catherine Brown** (instructed by **MW Solicitors**) for the **Appellant**  
**Alex Tinsley** (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 24 June 2020  
-----

**Approved Judgment**

## **The Honourable Mr Justice Lewis:**

### INTRODUCTION

1. This is an appeal against a decision dated 9 September 2019 of District Judge Coleman sitting in the Westminster Magistrates' Court. By that decision, the district judge held that the extradition of the appellant, Harry Clarke, would be compatible with the rights conferred by the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). She therefore ordered that he be extradited to Ireland.
2. The appellant appeals on the ground that the district judge erred in concluding that extradition would not be a disproportionate interference with his, and his family's, rights pursuant to Article 8 of the Convention. In granting permission to appeal, Steyn J. observed that the appeal was arguable on the basis that there was no considered and cogent care plan in place for the appellant's daughter in circumstances where her mother had just been sentenced to a term of imprisonment and the appellant was to be extradited to Ireland.
3. The appellant also seeks permission to adduce new evidence comprising two additional proofs of evidence from him, a further statement of his mother a witness statement and exhibit from his current partner, and an addendum to a psychological report of Dr Saddik dated 10 March 2020. I deal with that evidence below.

### THE FACTS

4. The appellant is a national of the United Kingdom. He is the subject of a European Arrest Warrant ("EAW") issued by the judicial authorities in the Republic of Ireland on 14 January 2019 and certified by the National Crime Agency in this country on 25 April 2019.
5. The EAW sought the extradition of the appellant in respect of an allegation that he had assaulted a male with a glass or bottle outside Mollies Bar in Ballina in County Tipperary on 15 November 2015 causing one laceration of approximately 2 centimetres in length over the male's left eye, and one of approximately 2 centimetres in length in front of the male's left eye. The appellant was charged with assault. If convicted, a sentence of up to 5 years' imprisonment could be imposed.
6. The circumstances surrounding the appellant's appearances in court in Ireland, and his subsequent return to the United Kingdom are set out in the judgment of the district judge. She made findings of fact in the light of the further information from the Irish judicial authorities and having heard evidence from the appellant and his mother.
7. The appellant was arrested at Dublin Airport on 16 November 2019 where he intended to board a flight to the United Kingdom where he lives. He was interviewed at a police station and is said to have made certain admissions in relation to the incident. He was charged and appeared before Killaloe District Court on 16 November 2015. The case was adjourned to 5 January 2016. The appellant was released on bail on lodging a sum of 150 euros. The judge explained to the appellant that the case was adjourned and that he was being released on bail.

8. On 5 January 2019, the district court adjourned the case to 5 April 2109 with a view to the matter being sent to the circuit court. The appellant was not present in court on 5 January 2019 but his solicitor was. On 5 April 2019, the appellant was again not present in court but his solicitor was. His solicitor told the court that the appellant had been unable to get a flight to Ireland. On 3 May 2019, the appellant failed again to appear at the district court. A warrant was issued for his arrest. The Irish authorities made attempts to contact him to persuade him to return to the Republic of Ireland without the need for an EAW but those attempts were unsuccessful. An EAW was subsequently issued. The appellant was arrested and brought before the Westminster Magistrates' Court.
9. At the extradition hearing, the appellant gave evidence and said that he had not had a solicitor at the police station and had not been legally represented at the district court in Ireland. He said that he believed that the proceedings in Ireland had been concluded and that he had been fined 150 euros. The district judge accepted the evidence from the Irish judicial authorities as to what had happened in Ireland. She found that the appellant was untruthful. She expressly rejected his claim that he believed that the proceedings had been concluded and that he had been fined 150 euros. She said at paragraph 52 that:

“My finding is that the having been released from the District Court on 16 November 2015 the RP returned immediately to England and failed to appear at court in the requesting state on the appointed days as required. He is a classic fugitive from justice”.
10. The district judge dealt with and rejected a claim that extradition would be incompatible with Article 3 of the Convention. There is no appeal on that ground.
11. In relation to Article 8 of the Convention, the district judge summarised the evidence. The appellant was a single man who lived with his mother in Southampton. His evidence was that his mother's health was not good as she suffered from fibromyalgia which, the appellant said, was a condition that affected her muscles. She had chronic pain and memory impairment and required significant help from the appellant. As an only child, the appellant was the only person available to help her. She also considered and summarised the evidence from the appellant's mother in which she confirmed that she suffered from fibromyalgia, and also Raynaud disease which affected her hands and feet. She suffered from post traumatic stress disorder stemming from events in her own childhood.
12. The appellant's evidence was that he had two children. They had different mothers. One was a son, whom I will refer to as A, who was 18 months old and lived with his mother. The appellant had regular contact with his son in the evenings and at weekends.
13. The appellant had another child, a daughter whom I will refer to as B. B was 9 years old at the time of the extradition hearing. Sadly, her baby brother had died, aged only 9 months of age, about 18 months before the extradition hearing. B had witnessed attempts to revive her brother. She was receiving counselling for emotional problems that she suffered as a result. Furthermore, the district judge was told at the hearing on 9 September 2019 that B's mother had been convicted of an offence of causing grievous bodily harm and sentenced to 18 months' imprisonment. B was living with the appellant and her grandmother.

14. The district judge referred to a report of a special educational needs co-ordinator at the school attended by B. That referred to the significant trauma suffered by B and the effects on her. The district judge also referred to the opinion of the child psychiatrist, Dr Saddik, who had assessed B. The district judge noted that Dr Saddik had found that B was suffering from moderate to severe post traumatic stress disorder and complicated grief. At the time that the psychiatrist wrote her report, B's mother had not been sentenced. Dr Saddik noted that B was at risk of losing both her parents in the same week if her mother were imprisoned and her father faced extradition to Ireland. She noted the view of Dr Saddik that there were no other adults who could care for B in those circumstances and B would have to be taken into the care of the local authority and placed into a foster home. Dr Saddik's view was that separation from both parents was likely to be experienced by B as an alienating and depersonalising and would contribute further to her mental health difficulties including her depression. It would be likely to influence most of her childhood.
15. The district judge also considered evidence about the appellant's mental health. An opinion from a consultant psychiatrist, Dr Brown, dated 30 August 2019, stated that he did not suffer from attention deficit hyperactivity disorder but had symptoms consistent with post traumatic stress disorder and reported symptoms of depression and anxiety.
16. The district judge identified the factors favouring, and militating against extradition as follows:

“ I have identified the following factors in favour of extradition

- There is constant and weighty public interest in extradition that those accused of crimes should stand trial for them. The offence is very serious alleging an assault in a public place involving a weapon (a glass or glass bottle) resulting in two facial lacerations of approximately 2 centimetres each.
- The UK should honour its international treaties.
- The UK should not be a safe haven for fugitives. On my finding this RP left the requesting state, failed to comply with his bail obligations and has not yet been tried. The victim is awaiting his opportunity to obtain justice for the harm perpetrated upon him.
- A Bench Warrant was issued for the RP's arrest.

“60. I have found the following factors which militate against extradition.

- The RP is a British citizen.
- He was recently made subject to an order of conditional discharge in respect of possession of a class A drug but has otherwise not offended in this jurisdiction since he was a youth. He has not previously offended in the requesting state.
- He lives with his mother who has debilitating health conditions (fibromyalgia and Renaud's disease) for whom he provides both physical and emotional help.
- He is the father of two children: [B] who is 9 years old and [A] who was 18 months old when the RP did his proof. I have not seen birth certificates in respect of either and have been unable to determine whether he has parental responsibility for either. I received no evidence from the mother of the younger child, with whom [A] lives, as to contact arrangements. The RP says that he sees the child regularly,

during the evenings and at weekends. The RP says he has a shared care arrangement with Kylie, [B]’s mother. I have not received any evidence from her either. Neither the proof nor the oral evidence of RP’s mother dealt with either of the children. I note [B]’s mother refused to participate in the psychological assessment of Rosie with Dr Saddik. I also note from Dr Saddik’s report that [B]’s stepfather (Kylie’s partner) does not have a good relationship with [B], although this has presumably been self-reported by the RP. Dr Saddik also notes “RP currently lives with paternal grandmother and at times with [B]” I do question whether this supports a shared care arrangement as described by RP.

- On the 30<sup>th</sup> August [B] mother, Kylie, having been convicted by a jury at Southampton Crown Court, was sentenced to 18 months imprisonment for a section 20 Offences Against the Person Act offence. She and her two sisters became involved in an incident culminating with Kylie (Peck) pushing a glass bottle into the victim’s face causing a deep cut to the bridge of her nose which has left a permanent scar. Since the sentencing hearing [B] has been living with her father (and grandmother).
- The RP asserts that if he were extradited there is nobody else who can care for [B]. He says his mother’s poor health would not permit this.
- The maternal grandparents live in Doncaster and I am told they have drug addictions. There is no corroboration of this.
- There are no other maternal relatives.
- There are no other paternal relatives.
- [B] may have to be accommodated by the local authority in foster care.
- [B] already has emotional needs which are being met by regular counselling. Her baby brother died relatively recently of pneumonia and [B] witnessed paramedics attempting CPR on him.”
- 

17. Having identified the relevant factors, the district judge analysed them in the following way:

“61 Analysis of Article 8 Factors

The factors in favour of extradition in this matter are strong. If however the RP were extradited [B] would be without both her mother and father for a period of time. The mother will be incarcerated for 9 months of her 18-month sentence and she could be released earlier on home curfew if deemed appropriate. Assuming however that she is released after 9 months [B] would be without her mother until the beginning of June 2020. The timescales for the RP are less certain because of waiting time for the trial to place and for a sentence to be served in the event of a conviction. It is unlikely that if convicted anything other than a custodial sentence would be passed. [B] is currently living in the same home as her parental grandmother and it is certainly more than a possibility that the local authority, rather than remove [B] to a foster placement, would keep [B] living in her current home with her paternal grandmother and the provision of family support. Children’s services would need to carry out an assessment to determine the best plan for [B] but providing her with the stability of her grandmother’s home, her grandmother’s love, attending the same school and keeping the routine and the same friends might well be in her best interests to manage the situation until her mother has her liberty. The last paragraph on page 8 of Dr Saddik’s report deals with Ms Hare caring for [B].

I have considered the summary and conclusions of the report of Dr Joy, the consultant clinical psychologist who assessed Ms Hare. She states that Ms Hare was accepting of the rationale for treatment to manage her conditions and such treatment would improve the quality of her life. This would lift her own mood.

It is clear that [B] is a very troubled child and I have considered Dr Saddik's report carefully together with the report of Becky Dinnage, the special educational needs coordinator at [B]'s school. Dr Saddik reports that *[B] requires family stability and a period free from further significant losses until such a time she is able to process the loss of her brother following his death. This has been a period of 18 months and she still has not resolved many aspects of the death, relationships. [B] clearly needs therapy to address very specifically her severe PTSD.* She also reports though that the paternal grandmother, Ms Hare, can meet [B]'s emotional needs but not her practical needs, without support. She manages herself when the RP is at work but he has usually helped with washing, dressing and leaving a flask of coffee/sandwich for her before he goes.

62. This is a very difficult and sad set of circumstances. It is cruel in the extreme that because of the actions of both her mother and her father it is a nine year old child who is likely to suffer the most. I am acutely aware that the interests of a child are a primary consideration in extradition matters, they are not however the paramount consideration. I had considered whether I ought to adjourn this matter for social services to assess this family but on balance considered that further delay would not be in [B]'s best interests. The uncertainty of her situation is causing much anxiety. Children's services will do what is necessary and, in the meantime, [B] will be beginning a new academic year at school. The reports which have been prepared for this hearing will no doubt be shared with Roxie's school and children and family services.

63. Having carried out the balancing exercise I am not satisfied that the countervailing factors in this case outweigh the very strong public interest in extradition. The assault for which the RP is due to stand trial is such a serious charge and the RP deliberately absconded to avoid the judicial process in Ireland. The article 8 challenge is rejected."

18. The district judge therefore ordered that the appellant be extradited to Ireland as the EAW was valid there were no bars to extradition. The appellant sought permission to appeal and that permission was granted. He has remained on conditional bail throughout.

#### THE APPEAL AND THE NEW EVIDENCE

19. The single ground of appeal on which permission was granted is that:

"The District Judge erred in concluding that the surrender of the Applicant would not constitute a disproportionate interference with his and his family's rights pursuant to Article 8 [of the Convention]."
20. As appears from the submissions contained in the application for permission made in September 2019, the principal issue was seen to be the assessment by the district judge of the impact that the extradition of the appellant was the impact on his daughter, B, then aged nine. The application for permission was made at a time when [B]'s mother had been sentenced to 18 months' imprisonment. B would lose both her mother and her father if the appellant was extradited. The application contended that

the district judge had failed to give sufficient consideration to the impact on B's care at a practical level. There was no clear care plan. It was not the case that the appellant's mother would be capable of looking after B given that she herself was being cared for by the appellant. The application also submitted that the district judge failed to have sufficient regard to the significant emotional impact on the appellant and his mother.

### *The New Evidence*

21. The appellant has submitted two addendum proofs of evidence to bring the court up to date with events occurring since the extradition hearing in September 2019. The principal facts, that I accept as existing, are as follows.
22. First, Kylie, B's mother, successfully appealed against her sentence of imprisonment in October 2019. A suspended sentence was imposed instead. B's mother spent approximately six weeks in prison. Since her release, she has given birth to another child, a baby boy.
23. Secondly, B has since her mother's release continued to divide her time between her mother and her father's home. The appellant's proof refers to the custody as being shared custody. That is not referring to any order made in legal proceedings. Rather, it is a description of how the appellant and B's mother look after B. As at the time of the first addendum proof of evidence, prepared at some time in March 2020, the appellant says that B was spending weekends at his home (where he lives with his partner and his mother) and B would also go there in the week. He said that on average B spent four days a week with him.
24. Thirdly, he said that he had enrolled B into dance and boxing classes to help with B's emotional well-being. That relates to the period between some time in January 2020 and before the imposition of restrictions due to the coronavirus pandemic on 26 March 2020. Things have changed as a result of the restrictions and the boxing and dancing classes are not taking place. It is accepted that the description of the appellant's involvement prior to that date is the best description of the active role that the appellant plays in B's life. She stays with him, on average, 4 nights a week. He plays a significant role in caring for B and in her life and there is an obvious, loving bond between B and the appellant.
25. Fourth, in his second addendum proof, the appellant also explains that he and Charlee Kasey have been in a relationship for well over a year. They began living together in the appellant's mother's house in December 2019. Ms Kasey discovered in March 2020 that she is pregnant. They had intended to rent a three-bedroomed house close to the appellant's mother but those plans will have to go on hold if the appellant is extradited. Ms Kasey would then continue to live at his mother's house. Ms Kasey is employed as a hairdresser but is currently on the government furlough scheme. She will in due course be eligible for maternity leave and maternity pay. Ms Kasey has also made a witness statement confirming these matters. The pregnancy was unplanned. Ms Kasey and the appellant worry how Ms Kasey would cope with a new baby if the appellant were extradited.
26. Fifthly, the appellant continues to look after his mother. He is her only child. During the coronavirus pandemic, his mother has remained at home as she is vulnerable due

to underlying medical conditions. The appellant has been doing all the shopping for his mother. His mother, Ms Hare, has made a witness statement confirming these matters and confirming that she continues to have health difficulties, has been in constant pain and has been unable to get out of bed for days.

27. There is also a further report, dated 10 March 2020, from the consultant psychologist, Dr Saddik. The report is lengthy containing 156 paragraphs. It should be read in full. The following are extracts or summaries of the findings that are principally relevant to this appeal.

28. The psychologist summaries her findings at paragraph 120 in the following terms:

“120. [B] is still suffering from mild to moderate PTSD difficult to specify due to [B]’s underreporting of symptoms. She has developed new symptoms that include social anxiety. There has been a reported improvement in her mood and negative affect, by [B] herself and her father, but not by parental grandmother. There is still evidence of grief issues but these have greatly reduced since the birth of her half brother in January 2020 that has significantly helped to ameliorate the grief she felt for her brother who died 18 months ago. There are serious and complex social issues for [B] that manifest at school, and mother’s incarceration intensified these. The loss of father through extradition and incarceration would result in further re-traumatising [B] and further complex peer and social issues. Due to her emotional reliance on father, she is likely to have a severe reaction to his loss. The longer he is away the worse she will be. In addition, his absence would her at risk of emotional neglect and at risk of developing new diagnoses, for example depression and ODD. She is unlikely to manage in care home situations away from her loved ones and she is likely to be excluded from school and develop further oppositional behaviours since the school cannot manager her behaviour and emotional deregulation without the support of father. The school referred to CAMHS and an assessment has taken place. Psychological intervention on an active problem; PTSD related to the loss of father and the base loss of Charlie, is unlikely to work and can also be re-traumatising.”

29. In considering how B is now, Dr Saddik says that B has significantly improved relative to the position at the previous assessment in July 2019 but still has a diagnosis of mild to moderate PTSD (rather than moderate to severe). Dr Saddik also says that the symptoms have improved significantly. The psychologist considered the emotional loss if the appellant were extradited. She says that B’s reactions would include depression and PTSD, and her behaviour would deteriorate and would be impossible to regulate emotionally particularly at school. She would be likely to lose any gains in self-confidence that she had made. Dr Saddik says that there is no doubt that the loss of her father would be experienced as a significant trauma for B. She had experienced a reduction in symptoms over the last couple of months but she would be re-traumatised by the loss.

30. At the hearing, Ms Brown for the claimant produced an e-mail to her instructing solicitor from a lawyer in Ireland whom she had contacted. That lawyer gave his views on likely sentence if the appellant pleaded guilty or was convicted after trial. The e-mail says that the lawyer told her there are no jury trials taking place in Ireland at present but they are expected to resume in October 2020. Trials for those in custody are likely to be given some priority, in his view, and, if the appellant is remanded in custody his trial would be given some priority.



31. I grant permission for the new evidence to be adduced. In the particular circumstances of this case, it will be necessary to consider the current position and to decide whether extradition is compatible with Article 8 of the Convention. It is, therefore, appropriate to admit that evidence. I have read and considered the evidence before the district judge and the new evidence in dealing with this appeal.
32. For completeness, I note that the opinion of Dr Saddik referred to an assessment to be carried out by CAMHS. That assessment was not in the evidence before me at the hearing. To ensure that all potentially relevant information was considered I asked for a copy, if available, to be provided after the hearing. It was provided on 30 June 2020 (together with a statement from B’s mother commenting on one factual matter referred to in the assessment). In the event, the assessment, and statement, do not materially affect matters. Whilst I have considered their contents carefully, I would not grant permission to adduce the assessment and witness statement as the evidence does not materially assist.

### THE STATUTORY FRAMEWORK

33. The district judge had to determine under section 21A of the 2003 Act whether extradition would be compatible with the Convention. The section provides so far as material that:

“(1) 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 within the meaning of the Human Rights Act 1998;

.....

(4) The judge must order D's discharge if the judge makes one or both of these decisions—

(a) that the extradition would not be compatible with the Convention rights;

.....

(5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—

(a) that the extradition would be compatible with the Convention rights;

.....

(6) If the judge makes an order under subsection (5) he must remand the person in custody or on bail to wait for extradition to the category 1 territory.”

34. The material provisions of the Convention is Article 8 which provides that:

#### **“Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public body with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic

well-being of the country, for the prevention of disorder or crime, or for the protection of the rights of others.”

35. The district judge determined that the extradition of the appellant would be compatible with his and his family members’ rights under Article 8 of the Convention. There is provision to appeal to the High Court pursuant to section 26 of the 2003 Act. The powers of the High Court are set out in section 27 of the Act in the following terms:

“27 Court's powers on appeal under section 26

- (1) On an appeal under section 26 the High Court may—
  - (a) allow the appeal;
  - (b) dismiss the appeal.
- (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
- (3) The conditions are that—
  - (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
  - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
- (4) The conditions are that—
  - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
  - (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
  - (c) if he had decided the question in that way, he would have been required to order the person's discharge.
- (5) If the court allows the appeal it must—
  - (a) order the person's discharge;
  - (b) quash the order for his extradition.”

36. The question for the High Court on appeal is whether the decision of the district judge is wrong: see paragraph 24 of the decision of the Divisional Court in *Polish Judicial Authorities v Celinski* [2015] EWHC 1274 (Admin).

### THE SUBMISSIONS

37. Ms Brown for the claimant submitted that the district judge erred by failing to require a social services assessment and, therefore, failed to equip herself with the necessary information to assess the extent of the impact on B in considering whether extradition would result in a disproportionate interference with the rights conferred by Article 8 of the Convention. In those circumstances, Ms Brown submitted, the Court needed to conduct the balancing exercise afresh, relying on *Germany v Singh* [2019] EWHC 62 (Admin) at paragraph 25, and *Zorzi v Attorney General Appeal Court of Paris (France)* [2019] EWHC 2062 (Admin) at paragraph 66.
38. Ms Brown submitted that extradition would be a disproportionate interference with the rights conferred under Article 8 of the Convention. The main issue concerned the effect on B but, in addition, there was the effect on A, the appellant’s mother, his

partner, and on the appellant himself. B had suffered trauma from two losses already, the death of her half-brother and the period when her mother was imprisoned. The assessment of the psychologist was that the loss of her father if he were extradited would re-traumatise her. The improvements in her conditions and behaviour would be lost. There would be significant adverse effects on her, including her emotional well-being and behaviour. So far as A is concerned, the appellant had regular contact with A and A would lose that at a time when he was coming up to the age of three. The appellant cared for his mother and there was no other person who could. Whilst Ms Brown accepted that her needs would be looked after, there would be the emotional and practical impact on her of the loss of her son. Ms Kasey was pregnant. She would lose the support and practical assistance of the appellant during her pregnancy and when the baby was born.

39. Mr Tinsley submitted that the district judge had not erred. In any event, the error would not have led to any different outcome. The district judge took her decision at a time when it was thought that both of B's carers (her mother and the appellant) would be unable to care for her. Now, the position was that B's mother had been released from prison in October 2019, had cared for B and there was no basis for saying she could not care. In terms of section 27(4) of the 2003 Act, the new evidence would not result in any different result. Mr Tinsley submitted that, in pragmatic terms, a sensible approach would be for this court to carry out the balancing exercise afresh. If so, and if this court reached the same decision, there would be no basis to allow the appeal under section 27(3) or (4) of the 2003 Act.
40. In that regard, Mr Tinsley submitted that there was a high public interest, higher than in many extradition cases, in extradition. There was a public interest in upholding extradition arrangements. Further, there was a distinct public interest in ensuring that fugitives, as the appellant had been found to be, did not escape justice. Mr Tinsley accepted that the impact of extradition on B, in particular, was greater than usual because of the loss of her brother, and the temporary loss of her mother. In the circumstances, the interference with the rights of the appellant and the family members under Article 8 of the Convention was not sufficient to outweigh the very weighty interest in extradition.

## Discussion

41. The relevant principles are well-established and set out in cases such as *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25, *Norris v USA* [2010] UKSC, and *Polish Judicial Authorities v Celinski* [2015] EWHC 1274 (Admin). A useful summary of general principles was provided by Baroness Hale at paragraph 8 of her judgment in *HH*

“8. We can, therefore, draw the following conclusions from *Norris* : (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no “safe havens” to

which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private \*363 and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe”

42. In cases where extradition would have an effect on children, the best interests of the children “are a primary consideration although not always the only primary consideration and not necessarily the paramount consideration” (per Baroness Hale in *HH* at paragraph 33). Careful consideration will need to be paid to what will happen to a child if the child’s sole or primary carer is extradited.
43. The Divisional Court in *Celinksi* also indicated that judges dealing with extradition cases involving Article 8 of the Convention should set out an analysis of the facts and in, succinct and clear terms, adequate reasoning for the conclusion arrived at by balancing the necessary considerations. That approach involves setting out the pros and cons in relation to extradition in the form of a balance sheet.
44. The first question is whether the district judge erred in her approach. On the particular facts of this case, I do find that the district judge erred in not obtaining a social services assessment of what would happen to B in the event that the appellant was extradited. This was an unusual case. B was looked after at the time of the extradition hearing by her mother and her father (spending time at her mother’s and, also, up to 4 nights a week at her father’s as described above). The mother had been imprisoned immediately before the extradition hearing. The sentence was 18 months and the mother would have to spend 9 months in custody (subject to the possibility of earlier release). The father could be extradited. B would lose both her parents. That would occur after she had suffered the trauma of her young brother dying. The effect of that loss and the impact on B of losing both her mother and father was assessed by Dr Saddik. The option referred to by the district judge of B living with her parental grandmother was one that might well be difficult given the grandmother’s own health difficulties. It might itself result in additional pressures and stresses on the young child. The feasibility of that option, which would involve social services providing support, was not assessed. The suggestion was that B would otherwise go into foster care. I understand why the district judge did not want to adjourn. On the particular facts of this case, however, the district judge did need to have an assessment of what would happen to B, given that her mother was in prison, if the father was extradited. The district judge did need to know what would happen to B – would she stay with the grandmother or would she go into foster care – and what would be the impact on her of either course. There are cases where the High Court has recognised the need for such an assessment: see, e.g., *Krusinina v Latvia* [2014] EWHC 2509 (Admin), and *A, B v Central District Court of Pest Hungary* [2013] EWHC 3132 (Admin). This is one such case.
45. The district judge did err, therefore. The question is what follow from that error, particularly bearing in mind that the circumstances have changed and that the principal reason for requiring an assessment (the loss of both parents) will not now occur. In the circumstances, both counsel considered this court ought to carry out the

balancing exercise of considering whether extradition would result in a disproportionate interference with Convention rights. I agree. That will either be necessary to decide if the decision on the question of whether extradition was compatible with Article 8 of the Convention was wrong, and whether the appeal should be allowed, under section 27(3) of the 2003 Act or to reach a conclusion under section 27(4) of the 2003 Act.

46. The extradition of the appellant would involve an interference with the right to family life for the appellant, B, A, the appellant's mother (Ms Hare) and his partner (Ms Kasey) within the meaning of Article 8(1) of the Convention. It needs to be justified under Article 8(2) of the Convention. Extradition would pursue a legitimate aim and would be in accordance with law. The question is whether it would be necessary in a democratic society, that is, whether extradition would be a proportionate interference with the appellant's and his family members' rights to respect for family life under Article 8 of the Convention.
47. I have set out above the relevant facts as found by the district judge and the facts as found by me arising from the new evidence. I deal first with the factors favouring extradition.
48. First, there is the public interest in upholding extradition arrangements and ensuring that those charged with offences face trial. Here, the offence is a serious one, involving an assault with a weapon (a glass or a bottle) resulting in two lacerations to the face of the alleged victim.
49. Secondly, there is the public interest in ensuring that those who are fugitives from justice from evading, and being seen to evade, justice. Here, as found by the district judge, the appellant was granted bail in Ireland. He did not comply with the conditions of bail. He did not attend court hearings in Ireland. Instead, he left Ireland in order to avoid the trial process. There is a public interest in ensuring that those who flee a jurisdiction are not thereby able to avoid the criminal justice process.
50. The factors which weigh against extradition are these. First, there is the impact on B. Her mother is one of her carers and provides a home for her. The appellant describes the arrangements as shared custody where B stays either with her mother or with him (on average for 4 days a week). There is no evidence to indicate that her mother would not, or would not be able to, continue to provide a home and care for her. B will, therefore, have a home with her mother. It is, however, clear from Dr Saddik's recent report that there is a strong emotional bond between B and the appellant. It is likely that she will suffer emotionally if her father is extradited, for a time which may be lengthy and is at present uncertain. That will come after the loss of her brother, and the temporary loss of her mother. There is likely to be a severe reaction to the loss of her father resulting in depression and further symptoms of post traumatic stress disorder and behavioural problems.
51. Secondly, A, the appellant's son, is over 2 and ½ years old. He will be three years old in October this year. He lives with his mother and will continue to have a home with his primary carer if the appellant is extradited. The appellant has regular contact with A. That contact, and the opportunity for the appellant to continue playing a role in A's life, will be lost for any period when the appellant is extradited and is remanded in custody in Ireland.

52. Thirdly, there is the impact on the appellant's mother, Ms Hare. She has medical needs of her own. She relies heavily upon the appellant, as her only son, for practical help and emotional support. It is accepted that arrangements could be put in place to deal with practical needs. The loss of her son will however, be a significant loss to her. Ms Hare will not be left alone and will not be isolated as Ms Kasey will continue to live at the home.
53. Fourthly, there is the impact on Ms Kasey. She is now pregnant with an unplanned pregnancy. The plans to move to a nearby three-bedroomed home would have to be deferred. I give that particular factor very little weight as the relationship was formed, and the plans were made, at a time when the applicant knew that he was evading justice in Ireland. Ms Kasey will lose the support and help of the appellant during the next few months of her pregnancy and in the period after the birth of their child. The child will be deprived of having the father there.
54. Fifthly, there is the effect on the appellant. I have read the psychiatric opinion of Dr Brown dated 30 August 2019. She considered that the appellant did not suffer from ADHD but presented with symptoms consistent with complex post traumatic stress disorder, and he reported symptoms of depression and anxiety. She considered that the extradition proceedings were likely to worsen his symptoms and increase his risk to himself but that this could be managed by anti-depressant medication and therapy, in a community or prison, should his risk increase.
55. Analysing those factors, the position is as follows. There is a very high public interest in extradition in this case. There is always a weighty public interest in upholding extradition arrangements with other states. Here the allegations relate to a serious alleged crime involving assault with the use of a weapon (a glass or bottle) which caused injuries to an individual. Such allegations would be likely to result in a custodial sentence. There is the additional, significant factor that the appellant evaded justice. He was granted bail but did not surrender to bail and left Ireland in order to evade the criminal justice process. There is a very high public interest in extraditing him so that he can stand trial for the offence of which he is accused.
56. There will be effects on the appellant and his family members if the appellant is extradited. I bear in mind that the interests of B and A, as children, are a primary consideration. I am satisfied on the evidence that there would be a severe impact on the emotional well-being of B in particular. B will remain in the care of her mother. The loss of her father, for an unknown period, at this particular time in her young life, will have severe emotional effects and may adversely affect her behaviour. The effects on B are likely to be greater than those that arise inevitably in an extradition case where one parent is extradited. In all the circumstances, the effect on B, although potentially severe, will not be exceptionally severe and does not outweigh the very high public interest in this case in extradition. A will lose the opportunity to have regular contact with his father. He will remain in the care of his mother. The effect on A, however, is not severe and certainly not exceptionally severe and does not outweigh the public interest in extradition of the appellant.
57. In terms of the appellant's mother, Ms Hare, there will be an adverse effect on her as she will lose the practical and emotional support of her son. That is also true of Ms Kasey (although it is right to bear in mind that the appellant began his relationship with Ms Kasey at a time when the criminal charges in Ireland were outstanding).

There is also the effect on the appellant. That, however, relates to symptoms of post traumatic stress disorder, depression and anxiety which may worsen with extradition but can be managed within a community or a prison setting. The effect on each of them is not exceptionally severe. In the circumstances, the effect on each of the children, will not be exceptionally severe and does not outweigh the very high public interest in this case in extradition and does not outweigh the public interest in extradition in this case.

## CONCLUSION

58. Consequently, the extradition of the appellant would not be a disproportionate interference with his, or any of his family members', right to respect for family life under Article 8 of the Convention. Extradition is not barred by section 21A of the 2003 Act. In those circumstances, the ultimate conclusion of the district judge, that the appellant should be extradited to Ireland, is the correct one. The appeal will therefore be dismissed.

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**(ADMINISTRATIVE COURT)**  
**BEFORE THE HONOURABLE MR JUSTICE LEWIS**

CO/3594/2019

**HARRY CLARKE**

**Appellant**

**- and -**

**THE HIGH COURT OF IRELAND**

**Respondent**

---

**ORDER**

---

**Upon hearing** Counsel for the Appellant and the Respondent

**It is ORDERED that:**

**1. Permission is granted to adduce:**

- (1) two additional proofs of evidence from the appellant**
- (2) a further statement of Ms Hare**
- (3) a witness statement and exhibit from Ms Charlee Kelsey; and**
- (4) an addendum to a psychological report of Dr Saddik dated 10 March 2020**

**2. Permission is refused to adduce:**

- (1) a CAMHS report and**
- (2) a witness statement from Ms Kylie Peck.**

**3. The Appeal is dismissed.**

**BY ORDER OF THE COURT**

**DATED this 6 day of July 2020**