Neutral Citation Number: [2023] EWHC 2957 (Admin)

Case No: CO/4620/2023
AC-2023-LON-003508

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 21st November 2023

Before:
FORDHAM J

- -

Between:

VALERIJS LUKASOVS	**Appellant**
- and -	
GENERAL PROSECUTOR'S OFFICE (LATVIA)	**Respondent**

- -
- -

Jonathan Swain (represented by Sperrin Law) for the **Appellant**
The **Respondent** did not appear and was not represented

- -

Hearing date: 21.11.23

Judgment as delivered in open court at the hearing

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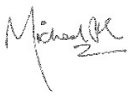
Approved Judgment

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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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. The Appellant is aged 33 and is wanted for extradition to Latvia. That is in conjunction with an accusation Extradition Arrest Warrant issued on 7 March 2022 and certified the same day, on which he was arrested on 5 April 2022. A previous Extradition Arrest Warrant had been issued in October 2019. The index offending is an offence of arson allegedly committed by the Appellant aged 24 on the night of the 5th and 6th of December 2014 in Latvia. It is an offence which he subsequently admitted when interviewed in Latvia in August 2016. The Appellant and an accomplice had been instructed to set fire to a Mercedes. They took a 5 litre can of petrol, climbed over the fence surrounding a house, and poured it over the car. The accomplice set it alight. €12,000 damage was caused to the vehicle. The Appellant was paid by a third party for committing this crime. That is what is alleged. The maximum sentence in Latvia is 10 years custody.

2. The Appellant's extradition to Latvia was ordered by District Judge Griffiths ("the Judge") on 2 December 2022. That was after an oral hearing at which the Appellant was represented by Counsel, gave live evidence as did his partner and as did an expert psychologist (Dr Rothermel). The Judge gave a very detailed judgment in which she analysed the live issues including section 14 (oppression or injustice by reason of the passage of time), Article 8 (private and family life) and section 21A (statutory proportionality). Article 8 ECHR is the sole issue raised on the appeal. The relevant Convention rights are those of the Appellant, his 39 year old partner, her 18 year old daughter and 11 year old son, and the couple's now 2½ year old daughter. The partner is Lithuanian. The Partners' common languages are Russian and English.

The Argument

3. In support of the arguability of the appeal, Mr Swain for the Appellant challenges the overall outcome. He also makes a number of discrete points in writing and orally. Mr Swain describes as perhaps the most substantive point in the case the issue of fugitivity. As to that, he submits that – at least arguably – the Judge went wrong in finding the appellant to be a fugitive. What happened was that the Appellant had been detained and questioned on a number of occasions in August 2016, at which point he had been notified of a duty to notify his residential address and any subsequent change of address. He did notify an address in the UK which he subsequently in his evidence described as the address of a friend. His evidence was that he lived at that friend's address for 9 months and then subsequently changed address. He accepted that he failed to notify that change of address. That would have been in 2017 when he was back in the UK. He said he was not living at the friend's address by January 2018. The Appellant was not in 2017 knowingly placing himself beyond the reach of the authorities, for the purposes of fugitivity. That is because he was already outside Latvia and already beyond their territorial reach. The Judge focused, as an act of deliberately putting himself out of reach of the court process, on the subsequent 2017 failure to notify the new address in breach of that obligation. There is a parallel with the case of De Zorzi v France [2019] EWHC 2062 (Admin) [2019] 1 WLR 6249. That was a case in which the requested person had been informed, while in France, that she would be required to respond to a summons (which Mr Swain submits means that she was being told that she would be required to return to France); and that she was under and aware

of that obligation; but that she subsequently chose not to comply with when called upon to do so. See De Zorzi at §§50 and 59. Just as she was found not to have been a fugitive so – at least reasonably arguably – the Appellant should not in the present case had been found to have been a fugitive. The finding was not based on any finding of fact as to intentional motivation the time when the Appellant left Latvia. That, then, is the essence of the argument on fugitivity.

4. Mr Swain submits – in this "finely balanced" case, using the Judge's phrase – that the absence of fugitivity can tip the balance, either on its own or in conjunction with other features of the case. Those other features include, in particular, the passage of time since the alleged index offence in December 2014. There is, says Mr Swain, an unexplained delay with a degree of culpability irrespective of the Appellant's actions and to be laid at the door of the Latvian authorities: first, in the two years between the alleged index offending and the steps to detain and question the Appellant in August 2016; then again in the subsequent periods between the interviews (August 2016) and the indictment (issued in January 2018); then again between the decision of the Latvian authorities in May 2018 and the issue of the first Extradition Arrest Warrant in October 2019.

5. Mr Swain emphasises the other aspects of the case. The Appellant is 33 and has no other criminal convictions. There is the young 2½ year old daughter, the 11 year old stepson and 18 year old stepdaughter, and the partner herself. They have been living together as a family unit. It is appropriate now to add into the equation the further 11 months of that cohabitation and the deepening bonds between them. There are obvious concerns as to the impact of extradition on children, and in particular the youngest child, supported by the evidence of Dr Rothermal. True it is that there were unimpressive features of her expert report, which included a misstatement that contact had been made with a school, and an error as to the youngest child's date of birth. But the essential substance remains. Serious impacts are evidenced. And, if anything, these are more serious than described in the Rothermal report (Dr Rothermel having recorded that the daughter was a year younger than she is). The Appellant has been in the UK for a substantial period of time, having been here prior to 2014 then again in 2015 and then in the second part of 2016 through to the present. He has been in gainful employment here. He has no convictions. Extradition is, at least arguably, a disproportionate interference with Article 8 rights.

Discussion

6. I would accept that Mr Swain has identified an arguable issue about the question of whether the Appellant is to be characterised as a "fugitive" in the light of the authorities. It does not, however, follow from that that there is a viable Article 8 appeal. In the context of the Article 8 compatibility of extradition, fugitivity does not operate as an "on/off switch". That cuts both ways. A requested person is entitled to ask the extradition court look at all the circumstances in relation to the passage of time, albeit bearing in mind that they are a fugitive, where that is the case. But the extradition court equally needs to look at all the circumstances in relation to the passage of time, in a case where the requested person is not being found to be a fugitive. The Article 8 balancing exercise and evaluative appraisal is highly fact- and case- specific. I proceed on the premise that the Appellant would – or may – succeed at a substantive appeal, on the fugitivity analysis. The question is where that leads.

7. Looking at the situation as a matter of common sense, the Appellant knew perfectly well that he was wanted in relation to the matters which were under investigation; he knew that he was under a duty to take a step which would mean that he could be located; he knew that he was under a duty to take a further step, were he to change his address, for the same reason. On any view, back in the UK and within a relatively short period of months, he deliberately decided not to comply with that duty. His default deliberately and knowingly undermined the Latvian authorities' ability to be able to find him.

8. In fact, the Appellant was subsequently spoken to via his mobile phone number in February 2018. That was a telephone conversation with the Latvian authorities. In that conversation, he said he would return to Latvia, and he also said he would provide further information. But he failed to do either of those things. And he then chose not to respond to further communications.

9. The Appellant can, in Article 8 terms, point to the tendency of the passage of time to weaken the public interest weighing in favour of extradition; as well as the tendency to strengthen the private and family life ties weighing against extradition. But the circumstances of the present case illustrate the limits on how the passage of time can be treated as undermining the public interest considerations in favour of extradition. The passage of time from 2017, and its implications, were clearly a direct consequence of the Appellant's own deliberate actions. Although the Appellant criticises the Latvian authorities for inaction between 2014 and 2016, on his own case he had come to the UK in 2015 after committing the arson offence, and had then gone back to Latvia in 2016 at which point he was detained and questioned.

10. The Judge rightly recognised that the Appellant only moved in full-time with his partner, her children and their daughter, from April 2022 onwards after his extradition arrest and his release on bail. The daughter had been born 14 months earlier, in February 2021. The relationship had begun in 2018/19. It had begun after the Appellant had the telephone conversation (February 2018) with the Latvian authorities, which confirmed that he knew they were taking steps to pursue him, which he then continued himself to take steps to undermine. The partner had looked after her two children and the couple's daughter without the Appellant having moved in full-time, during the period between February 2021 and April 2022. Before meeting the Appellant in 2018/2019, she had cared for her two children. As the Judge also recognised, the partner has a mother and sister in the UK with whom she is in contact. The index offence is a serious one. There are strong public interest features in support of extradition. These decisively outweigh the combination of features capable of weighing against extradition. The contrary is not, in my judgment, reasonably arguable with any realistic prospect of success. That was the view of Bourne J on the papers in August 2023. Having considered the matter afresh, and with the very considerable assistance in writing and orally of Mr Swain, I agree. For these reasons, and in these circumstances, I will refuse the application for permission to appeal.

21.11.23