



Neutral Citation Number: [2024] EWHC 1023 (Admin)

Case No: AC-2022-LON-003399

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 1st May 2024

Before:

MR JUSTICE FORDHAM

Between :

LESZEK ROBERT GOMULKA

Appellant

- and -

POLAND

Respondent

(No. 2)

Toby Cadman (instructed by Taylor Rose Solicitors) for the **Appellant**
Georgia Beatty (instructed by Crown Prosecution Service) for the **Respondent**

**Judgment on the Application to Certify Points of Law of
General Public Importance and for Leave to Appeal**

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:

1. This is a determination on the papers, where reasons are being contained within this written judgment and not simply within an Order in the court records. On 5 March 2024 I gave my judgment in this case: [2024] EWHC 460 (Admin). On 18 March 2024 the Appellant made an application for a certification “that there is a point of law of general public importance involved in the decision” (s.32(4)(a) of the Extradition Act 2003) and for leave to appeal on the basis that “the point is one which ought to be considered by the Supreme Court” (s.32(4)(b)). The Respondent responded on 2 April 2024 and the papers were referred to me at the start of term. I have reached the view that it is unnecessary to invite a reply or to convene an oral hearing, for the purposes of determining the application. I am grateful to Counsel for their assistance.
2. I have reminded myself of the basics (as in Konczos v Hungary [2022] EWHC 168 (Admin) at §5). (1) There must be “a point of law”. (2) It must be a point of law “involved in the decision”. (3) This point of law, involved in the decision, must be one “of general public importance”. (4) It is for this Court to address whether these characterisations are apt. (5) These are distinct from whether the point “is one which ought to be considered by the Supreme Court” (which would go to refusing leave to appeal).
3. There are three questions which Mr Cadman asks me to certify, and on which I am further invited to grant leave to appeal. The first question is:

Can a substantial and unexplained delay itself ever amount to an ‘exceptional circumstance’ rendering extradition ‘oppressive’ for the purpose of Section 14 of the 2003 Act?

The issue which I determined was “whether the extensive passage of time in this case itself constitutes ‘exceptional circumstances’” (judgment §4). I said (§6) that Mr Cadman had cited no authority to support “the proposition that a long period of time could – in and of itself – constitute ‘the most exceptional circumstances’, to allow access to the injustice or oppression test”. But my conclusion was that “the circumstances of the present case – including the passage of time – fall very far short of being capable of characterisation as ‘the most exceptional’ circumstances” (§6). The “in and of itself” point went nowhere. The question which is raised is not a “point of law” which was “involved” in my decision.

4. The second question is:

Does the established ‘private life’ of long term settled migrants under Article 8 of the ECHR enjoy less value than the established ‘family life’ of long term settled migrants by virtue of choosing not to have a partner or children?

The issue which I determined was whether the Judge “seriously under-weighed the nature of the Appellant’s private life” (§11). I recorded that “a disproportionate interference with private life with private life is a violation of Article 8”. I explained that the impact on private life in this case was described as “small”, because the Judge was comparing the impact on the Appellant’s private life with impacts encountered in some extradition cases, which impacts “are far weightier and more serious”, which is “because innocent family members are impacted” (§12). This is not a point of law, about a “value” relating to long term settled migrants and their choices. It is a point about severity of impacts, on the facts, made moreover in relation to “innocent family

members” whose rights are interfered with by extradition. I went on to say (§12) that the Judge had considered the impact on the Appellant’s private life, having “understood and recognised it”; that the Judge had explained that this could not be said to be “exceptionally severe”; and that the Judge “did not overlook or materially under-weigh the nature of the private life that had built up and was being interfered with”. Again, the question which is raised is not a “point of law” which was “involved” in my decision.

5. The third question is:

Are there circumstances in which the seriousness of an offence [can] be considered independently of the sentence given for that offence in the Requesting State to avoid the possibility of a sentence which does not adequately reflect the relative absence of seriousness of an offence?

The issue which I determined was whether (§9) the Judge, who “repeatedly referred to the two-year custodial sentence”, had failed to characterise the seriousness of the offending, overlooking that it was not “major” or “severe”. My reasoning explained (§10): (a) that the Judge was plainly well aware of the nature and seriousness of the crimes (multiple offences of fraud over an extended period of time, involving dishonest use of forged documents to obtain bank loans); (b) that the seriousness was reflected in the two-year custodial sentence (initially suspended), as the Judge had rightly recognised; (c) that the Judge referred to both the sentence “and a description of the four offences”, recording that the gravity of the offending as a factor to be weighed in the balance; and (d) that in referring again to the sentence, the Judge did not need to repeat or re-describe the nature and seriousness of the offending, which he plainly had it in mind and properly included. So, all aspects of seriousness which have been put forward were considered, on the specific facts and in the specific circumstances. Again, the question which is raised is not a “point of law” which was “involved” in my decision.

6. For these reasons, I will refuse the application to certify. It follows that I also refuse the application for leave to appeal.

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