# The Queen on the Application of Z v District Court Sad Okregowy

CO/5091/2014

High Court of Justice Queen's Bench Division

12 February 2016

**[2016] EWHC 2397 (Admin)**

**2016 WL 00491574**

Before: SIR STEPHEN SILBER

Friday 12 February 2016

THE ADMINISTRATIVE COURT

(Sitting as a Judge of the High Court)

## Representation

Mr Ben Cooper (instructed by Lansbury Worthington ) appeared on behalf of the Appellant.
Miss Saoirse Townshend (instructed by Crown Prosecution Service ) appeared on behalf of the Respondent.

## Approved Judgment

Sir Stephen Silber:

## Background

1 VZ applies under Rule 17.27 Part 17 of the Criminal Procedure Rules 2014 to re-open the appeal heard by me on 20 March 2015 at which I dismissed an against an order made by the District Judge at Westminster Magistrates' Court for the extradition of the appellant to Poland.

2 The background to this case is that the District Court of Sad Okregowy, Poland, issued a European arrest warrant on 17 December 2012 for the appellant's extradition to Poland based on convictions recorded against her for three theft offences in respect of which sentences totalling thirty-three months' imprisonment remained to be served. The European arrest warrant was certified by the National Crime Agency on 10 September 2013.

3 The appellant was duly arrested and appeared at Westminster Magistrates' Court where an order was made for her extradition. She appealed. A major issue on the appeal arose from the fact that the appellant had a son born in 2013 and she was then pregnant with a baby due in April 2015.

4 The case for the appellant was that if she were to be extradited there would be nobody in this country or in her home country to look after her son and the baby who was about to be born.

5 When the matter came in front of me on 21 January 2015, the judicial authority sought to persuade me that there would be a place in Poland where the appellant would serve her sentence where there would be facilities available for the appellant's son and her baby, when born, to be accommodated close to her.

6 The evidence was ambiguous. I made an order for further information to be provided by the judicial authority and it was provided. In the light of that information I was satisfied that if extradited, the appellant and her children would remain together in acceptable circumstances. Thus, the appeal was dismissed. It was also agreed that the appellant would not be extradited until the birth of her baby, and liberty to apply would be given for an extension of time - the date - when her extradition would take effect.

7 The time for the appellant's extradition was extended by a series of orders which were, in the main, made by Mr Justice Ouseley because there were proceedings in Poland aimed at suspending or deferring the appellant's sentence. The removal period was in fact due to start on 1 October 2015.

## The present Application

8 On 30 September 2015 the present application to re-open the appeal was lodged. The basis of it was that at the previous hearing there was an assurance given by the Polish authorities that the appellant would be placed with her children in a baby-and-child unit in a Polish prison was inaccurate. There was also evidence produced by the appellant in support of the application to reopen the hearing which explained that it was not correct that a mother who had children or who gave birth to a child in prison would stays with [the child] in prison or that the children can stay with her until the age of 3.

9 The Head of the Mothers and Children's Unit at Krzywaniec Prison was consulted, and she pointed out that a child could not stay with their mother once they had reached 4 years old. More importantly, she explained that there are only two prisons in Poland which cold provide for a mother to stay with her child. Those were the prisons in Krzywaniec (which I have just mentioned) and Kgrudziaez.

10 According to the official statistics for the prison service dated 17 April 2015, there were generally sixteen places in the mother and children's prison in Krzywaniec but all were occupied. The situation in the mother and children's prison unit in Kgrudziaez was similar as there were twenty-six places and thirty-three women were serving sentences. The statistics showed that every year prisons were almost one-hundred per cent full.

11 The overall position that emerged was that it was very unlikely or certainly not certain that the appellant and her children would be placed in the kind of unit which had been suggested would be appropriate for her when the matter came in front of me.

12 There was also a response from the judicial authority. They explained in paragraph 4 of that response:

> i "It is not possible to provide the British party with a statement that the appellant would be immediately accepted in one of the prison houses of the mother and child because the final decision lays with the director of the prison. And this would depend on the actual number of vacancies in the prison."

13 According to information obtained from the prison in Kgrudziaez, the prison house for the mother has twenty-six seats. Currently, they have thirty-one children with their mothers. In addition, there resides a dozen pregnant women who will deliver their children in the near term and the institution will have to provide them with a place to stay.

14 In connection with that information the prison in Kgrudziaez informed the court that currently it is impossible to accept the appellant with her two children.

## Discussion

15 The attitude of the judicial authority to this application is that they do not oppose the application to re-open it, nor do they wish to put forward positive submissions. It is unfortunate that they did not in fact decide to abandon the European arrest warrant as that would have avoided today's hearing

16 What I have to be satisfied of under rule 17.27 of Part 17 of the Criminal Procedural Rules is that for an application to succeed first, it is necessary - for the court to re-open it in order to avoid real injustice -, second, the circumstances are exceptional and make it appropriate to re-open the decision and theirs that there is no alternative available effective remedy.

17 In my opinion there will be a real injustice if my original decision stood because it was based on what has turned out to be a false and incorrect assumption, that it would be possible for the appellant and her two young children to be together in a mother-and-child unit in these prisons. These are, in the words of the Rule, exceptional circumstances and there is no alternative remedy other than for me to re-open the appeal. I have no hesitation in doing so because if I had known the facts as they turned out to be I would, without any doubt, not have ordered her extradition.

18 I cannot finish this case without expressing appreciation for the work that must have been done by the appellant's lawyers to obtain the necessary information which has enabled this application to be made. I thank both of you and Miss O'Raileigh as well. I would be grateful if you could convey my thanks to her - for the very helpful way in which the case has been presented.

19 Miss Townshend, if you could convey to your instructing solicitors the fact that they should in future give very serious consideration - if a situation like this arises - to withdrawing the European arrest warrant.

20 MISS TOWNSHEND: Yes. Thank you.

21 MR COOPER: Can I ask the court to confirm the appeal having been re-opened, the basis on which the appeal has been allowed is pursuant to Article 8?

22 SIR STEPHEN SILBER: What?

23 MR COOPER: Having re-opened the appeal . . . . .

24 SIR STEPHEN SILBER: Yes, certainly. The order should state that the appeal is to be re-opened and the appeal is to be allowed. It should be expressly stated that it is pursuant to paragraph 17.27.

25 MR COOPER: And the basis on which it is allowed is pursuant to Article 8, as I understand the court. The basis on which the court is allowing the appeal after re-opening it is pursuant to Article 8, for the record.

26 SIR STEPHEN SILBER: Yes. It is on the basis that there are exceptional circumstances and that if those facts had been known when the decision had been taken last year the order would not have been made.