



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2026] HCJAC 15
HCA/2025/19/XM

Lord Matthews
Lord Armstrong
Lady Carmichael

OPINION OF THE COURT

delivered by LORD MATTHEWS

in the application for leave to appeal under section 26 of the Extradition Act 2003

by

KRZYSZTOF ROMANIK

Appellant

against

THE LORD ADVOCATE for the Polish Judicial Authority

Respondent

Appellant: Party

Respondent: Logan; The Crown Agent

6 May 2026

Introduction

[1] On 16 October 2025 at Edinburgh Sheriff Court, the sheriff ordered the extradition of the appellant, a Polish national, to Poland. He is subject to an outstanding sentence imposed by the District Court in Szczecin on 7 August 2020. The sentence is for a cumulative period of 4 years' imprisonment, of which 3 years, 6 months and 28 days remain outstanding. The

sentence follows three convictions in Poland for offences including theft and assault and robbery.

[2] The appellant advances three grounds of appeal: (i) that his extradition to Poland would be disproportionate under section 21A of the 2003 Act considering his caring responsibilities for his former partner; (ii) his mental and physical health is such that it would be unjust or oppressive to extradite him, all in terms of section 25 of the Extradition Act 2003; and (iii) extradition to Poland would run contrary to his rights under Article 8 of the ECHR.

The EAWs & procedural background

[3] The appellant was convicted and sentenced at the District Court for Krakow Krowdrza on 27 February 2004 for charges of theft and attempted theft in early 1999. He was sentenced to a period of 10 months' imprisonment. In a letter dated 21 September 2023 from the Regional Court in Szczecin it is recorded that the appellant was present at and participated in his trial.

[4] On 19 November 2008, the appellant was convicted and sentenced at the same court for a single charge of assault and robbery on 7 September 1999. He was sentenced to a period of 2 years' imprisonment. In the letter of 21 September 2023, it is noted that the appellant participated in his trial, although he did not appear and was not represented at his re-trial, his initial conviction having been quashed on appeal. The letter explains that the appellant changed his place of residence without informing the court and that correspondence was effectively served under national law.

[5] On 12 February 2014 the Polish authorities issued an EAW seeking the appellant's extradition to Poland in advance of further criminal proceedings. The appellant was

surrendered to Poland in 2018. The EAW did not request extradition for the purposes of the enforcement of the earlier convictions.

[6] On 26 September 2019, the appellant was convicted and sentenced at the District Court for Szczecin-Centrum for eleven charges of theft by breaking and entering between 16 January 2005 and 9 March 2005. He was sentenced to a period of 2 years' and 6 months imprisonment. In the letter of 21 September 2023, it is recorded that the appellant did not participate in his trial, although he was represented at trial by a lawyer.

[7] On 7 August 2020, the District Court for Szczecin-Centrum combined the individual custodial sentences imposed in these cases and sentenced the appellant of new to a cumulative sentence of 4 years' imprisonment.

[8] It is that sentence which remains outstanding and is the sentence to which the EAW applies.

Background

[9] The appellant is aged 45 and he has lived in the United Kingdom since about 2006. In evidence, he explained that he was extradited to Poland once before in 2018 but he left for Scotland after only a month and a half. He has three children, aged 15, 9 and 8, the eldest of whom lives in London whilst the others live in Poland. He remains in telephone contact with each. He lives alone.

[10] The appellant gave evidence that he had been in a relationship with Ms A, although they are no longer partners. Ms A has a daughter aged 13. Their relationship ended when she was admitted to Forth Valley Hospital between February and July 2024. She has poor mental health. She takes drugs which causes her to become enraged and threaten to harm herself. The appellant maintained in evidence that he visits her around 4 days per week to

help with household tasks, helping her wash and taking her for walks. He does this because she has no family in Scotland. He explained that Ms A has a sister, with whom she has no contact.

[11] Ms A's evidence was more circumspect. She acknowledged that she and the appellant were former partners, that she was admitted to hospital for 5 months from February 2024 and that the appellant visited her there every day. She has a diagnosis of schizoaffective disorder for which she receives medication from her GP. She has regular appointments with a community psychiatric nurse. She explained that her daughter lives with the child's father and that her sister, who lives in South Queensferry, visited her in hospital as well. She is close to her sister and they rely on each other but not on a daily basis. She also has a friend whom she regards as a brother. He lives around an hour away from her and she is in regular contact with him. Her evidence did not support the appellant's evidence that he tended to her 4 days per week. She, instead, suggested that the frequency of his visits depended on the week and on the state of her mental health.

[12] The appellant gave evidence that he had no problems with his physical health although he suffered from depression. He has an alcohol dependency and has been involved in the Caledonian Project as part of a community payback order. He is not currently on any medication. He accepted that he had been extradited to Poland in 2018, that he had given written admissions relative to the offences he was extradited for and that he was released. He maintained that he had been given permission by the prosecutor to leave Poland and that he was expecting to receive a citation to attend court. He confirmed that he had provided an address when he left prison in Poland. It was the address of his father-in-law. His passport had been confiscated and he had applied for, and received, an ID card before leaving Poland.

[13] In a psychiatric report dated 19 April 2025 it was reported that the appellant has a drug and alcohol dependency. He suffers from mild anxiety and occasional suicidal thoughts due to his current circumstances. However, it was recorded that there is no evidence to suggest that the appellant suffers from a major mental disorder such as severe depression, psychosis or mania.

[14] The appellant advanced four arguments before the sheriff. First, extradition would be incompatible with his rights as guaranteed under Article 8 of the Convention. He had resided in the UK, at that time, for 17 years, his siblings and his uncle lived in the UK and Ms A was dependent on his daily assistance. Second, the passage of time that had elapsed since the relevant convictions was such that it would be unjust or oppressive to extradite him: section 14, 2003 Act; *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779. Third, both his poor mental health and Ms A's mental illness barred his extradition under section 25 of the 2003 Act. Fourth, that the Polish authorities had already extradited the appellant but failed to include the outstanding judgments from 2004 and 2008 which was oppressive, or at least it was unclear why they had not sought to do so.

The sheriff's decision

[15] The sheriff was satisfied that the appellant was personally present at trial for the 2004 conviction, that he was personally present at trial for the 2008 conviction but not present at re-trial (although a citation had been sent by post to an address that he had moved on from) and that he was not personally present at trial for the 2019 conviction but was represented by a lawyer. He found it proved that the appellant had been in a relationship with Ms A, that the relationship had come to an end and that the appellant visited her regularly, sometimes providing help around the house. He was satisfied that the

appellant has three children, aged 15, 9 and 8, that the 15-year-old maintains telephone contact with him, and that the other children live in Poland but they intend to return to the UK with their mother.

[16] Extradition was not oppressive on the basis of passage of time since the appellant was a fugitive. The appellant was aware of the proceedings in all three matters. In any event, there was no undue delay in pursuing matters following the third trial and the *cumulo* sentence which were the operative dates. There was no oppression on the basis of the procedural history. It is clear from the history that the sentences had not been combined at the time of the original accusation.

[17] The threshold for an Article 8 defence to succeed was high. The court required to balance the private and family life demonstrated by the appellant against the public interest in extradition. There was a consistent and weighty public interest in extradition of those accused of crimes to stand trial, and for those convicted, to serve their sentences. The question was one of proportionality.

[18] There was no evidence that any of the appellant's children were dependent on him, nor was there any evidence that extradition would interfere with the telephone contact he enjoyed with them. The appellant was no longer in a romantic relationship with Ms A. She was not a member of the appellant's family. The primary issue for consideration was the appellant's Article 8 rights, rather than Ms A's. In the circumstances, the interference with his Article 8 rights was proportionate.

Submissions

Appellant

[19] The appellant's agents have withdrawn from acting. No written submissions have been lodged with the court but the appellant addressed us through an interpreter. He said he had stayed in this country for 18 years and it was part of his life. He had permanent accommodation and his life had completely changed and started again. He cared for his female friend who had mental health issues. The offences occurred many years ago when he was young. He had friends and support here as well as a dog. He could not imagine life in Poland. He was undergoing treatment, as demonstrated by a letter from the social work department supervising his CPO. He had medical conditions and had made several suicide attempts, the last being 3 or 4 months ago. For the last 10 years he had been attending appointments and receiving treatment from a psychiatric nurse, which was improving his life.

The Lord Advocate

[20] The sheriff did not err in his Article 8 assessment. Interference with human rights would have to be extremely serious for the public interest in extradition to be outweighed: *Norris v Government of the United States of America (No 2)* [2010] UKSC 9, 2010 2 AC487 per Lord Philip of Worth Matravers at [55] – [56]. There was 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 UK should honour its treaty obligations to other countries, and that there should be no safe havens to which requested persons can flee in the belief that they will not be sent back: *H(H) v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25, [2013] 1 AC 338. An extradition judge required to approach

the question of Article 8 proportionality by setting out the factors for and against extradition and then weighing them to arrive at a decision: *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (admin), [2016] 1 WLR 551; *V v Lord Advocate on behalf of the Government of Romania* [2020] HCJAC 33, 2020 SLT 1161.

[21] The sheriff carried out the correct approach to his proportionality assessment. Appropriate weight was given to the appellant's circumstances, as well as to the impact his removal would have on Ms A to the extent it was relevant. Albeit a close friend, she was not a member of the appellant's family and had other sources of support apart from the appellant. In all of the circumstances, the public interest in extradition was not overridden.

[22] Section 21A of the 2003 Act applied solely to persons accused of the commission of an offence: section 21A(1), section 11(5), 2003 Act. It followed that the provisions of section 21A did not apply to the appellant. In any event, the sheriff was correct to conclude that extradition was not disproportionate.

[23] The threshold for a requested person's discharge on account of the condition in section 25(2) (that the physical or mental position of the (requested person) is such that it would be unjust or oppressive to extradite him) was high and fact specific. There was a rebuttable presumption that medical issues would be dealt with appropriately in the requesting state: *W v Spanish Authority* [2020] EWHC 2278 (admin) at [59].

[24] There was no finding in fact which satisfied the high test required to pass this threshold set by section 25. The psychiatric report concluded that the appellant did not suffer from a major mental disorder. No evidence was led by the appellant in support of the view that extradition would affect his mental health to a greater extent than the stress and anxiety ordinarily expected from extradition. The sheriff was correct to find that the

appellant's extradition was not unjust or oppressive on account of his mental or physical condition.

Analysis

[25] No argument was presented to us, either in the grounds of appeal or in submissions, about the fact that extradition was not sought in 2018 for the first two convictions.

Accordingly, we say no more about it.

[26] It is quite clear that section 21A of the 2003 Act is not applicable in the present circumstances. Section 21A was introduced by section 157(2) of the Anti-Social Behaviour, Crime and Policing Act 2014, to deal with cases where the requested person was wanted for prosecution and this is clearly what the provision says. However, Article 8 still has to be considered and we will go on to do so.

Mental and physical condition- section 25 of the 2003 Act

[27] Section 25 provides that if, at any time in an extradition hearing, it appears to the judge that the physical or mental condition of the requested person is such that it would be unjust or oppressive to extradite him the judge must order the person's discharge or adjourn the hearing until it appears as though it would no longer be unjust or oppressive.

[28] It follows that extradition of a person who is seriously ill may be unfair or oppressive: *Dewani v Government of the Republic of South Africa* [2012] EWHC 842 (Admin). Extradition of a person who is physically or mentally ill may also violate Article 3 if the illness is sufficiently severe and will be exacerbated by extradition: *McKinnon v Secretary of State for the Home Department* [2009] EWHC 2021 (Admin) at [67]-[71]; *Pretty v United Kingdom* (2002) 35 EHRR 1 at 52.

[29] The threshold to meet section 25, or indeed Article 3, is a high one: *Gavenaite v Lord Advocate* [2025] HCJAC 48, 2024 SCCR 418 per Lady Wise at [40]; *Jantos v Lord Advocate* [2015] HCJAC 32 per LJC(Carloway) at [11] citing *Howes v HM Advocate* [2010] HCJAC 123; 2011 SCL 306 pp 312-313 per Lord Emslie. The term “unjust or oppressive” requires regard to be had to all the relevant circumstances, including the fact that extradition is ordinarily likely to cause stress and hardship; neither of those being sufficient: *Dewani v Government of the Republic of South Africa, supra* at [73]. It must be established by independent and convincing evidence that there is a very high risk of suicide, the onus is on the appellant and as a generality, it is assumed that the prison system of a category 1 requesting state will provide necessary medical treatment for prisoners: *Jantos; Wlodarczyk v Lord Advocate* 2012 SCCR 490. The test was met in *Maziarski v Lord Advocate* [2012] HCJAC 33, 2012 SLT 553 but the circumstances were extreme.

[30] Turning to the present case, the evidence available to the court surrounding the appellant’s health is very slim. The psychiatrist’s report is not particularly supportive in that, whilst he has presented with mild anxiety and occasional suicidal thoughts, there is no evidence to suggest that he suffers from a major mental disorder such as severe depression, psychosis or mania. His mental health difficulties, and indeed his addiction problems are likely to be managed by the Polish authorities. Nothing in the submissions before us or the letter from the Social Work Department advances the appellant’s position in any way. The circumstances do not come close to meeting the test and this ground of appeal must fail.

Article 8

[31] This is the only issue remaining before us. Where a requested person has been convicted either in his presence, or, *inter alia*, where he deliberately absented himself from

trial, the court must decide whether the person's extradition would be compatible with the Convention rights: section 21, 2003 Act.

[32] Article 8 provides:

- “(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 authority 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, for the protection of health or morals, or for the protection of the rights and freedoms of others”

[33] In order for extradition to be compatible with Article 8(1), it must satisfy the conditions in Article 8(2), namely: (i) it must take place in accordance with law; (ii) it must be necessary in a democratic society, in the sense of being proportionate; and (iii) it must take place for one of the specified purposes of Article 8(2). Conditions (i) and (iii) will always be satisfied (in that extradition is sanctioned by the 2003 Act and fulfils the purpose of prevention of disorder or crime).

[34] When determining proportionality under Article 8, the following principles are to be adopted:

- i. It is only if there is some quite exceptionally compelling feature, or combination of features, present, that interfere with family life consequent upon extradition, that discharge on Article 8 grounds will be justified:
Norris v Government of the United States of America (No 2), supra.
- ii. The court still has to examine carefully the way in which it will interfere with family life: *HH v Deputy Prosecutor of the Italian Republic, Genoa, supra* per Lady Hale (as she was then) at [8].

- iii. The question is always whether the interference with the private and family lives of the requested person and other members of his/her family is outweighed by the public interest in extradition, *ibid*.
- iv. There is a constant and weighty public interest in extradition, *ibid*.
- v. However, the weight to be attached to the public interest does vary depending on the nature and seriousness of the crimes involved, *ibid*.
- vi. The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact on private and family life, *ibid*; and
- vii. It is only in exceptional circumstances that a requested person's private or family life will outweigh the legitimate aim pursued by extradition. See for example *Babar Ahmad and Others v United Kingdom* (2010) 51 EHRR SE97 at [172].

[35] The question for this court is whether the sheriff erred in his proportionality assessment under Article 8.

[36] Dealing first with the Article 8 rights of the appellant and his children, the *status quo* will largely be unaffected. The appellant will still be able to maintain telephone contact with his children, who do not, in any event, live in Scotland. The public interest in extradition far outweighs the Article 8 rights as they exist between the appellant and his children.

[37] The next issue is whether extradition will interfere with the Article 8 rights of the appellant and Ms A. Do they, in fact, have a "family life" under Article 8. The question is whether *de facto* family ties exist. Essentially it is one of fact: *Lebbink v Netherlands* 2005 40 EHRR 18 at [36]. In determining whether family life exists, it is necessary to consider all the circumstances of the case, including the intentions of the individuals involved, the stability

of their relationships (for example, whether a couple live together, the length of their relationship and whether they have children together): *Reed and Murdoch Human Rights Law in Scotland 5th Edition* Murdoch, 2025 at 6.12 and cases therein cited. Some elements of cohabitation or the existence of other factors indicating that a relationship has sufficient constancy to create *de facto* “family ties” are necessary: *Keegan v Ireland* (1994) 18 EHRR 342; *Lebbink*; *Tsiklauri v Secretary of State for the Home Department* [2020] CSIH 31, 2020 SC 495.

[38] The findings in fact of the sheriff anent the relationship between the appellant and Ms A are limited to (a) the fact that they were in a romantic relationship, they are no longer in that relationship and that they remain friends; and (b) the appellant visits her “regularly”, sometimes providing help around the house.

[39] These facts do not disclose a relationship which can be designated as “family life” within the meaning of Article 8. The extent of the relationship can be likened to a friend who provides some assistance from time to time. The parties are not in a romantic relationship at all. They do not cohabit. They do not, on the findings in fact, act as a *de facto* family.

[40] In the event we are wrong about that, we consider, whether the appellant’s extradition is a proportionate interference with the Article 8 rights of the appellant and Ms A. We have to do that in relation to the private rights of the appellant in any event. As noted in *HH*, the consequences of the interference will require to be exceptionally severe for an Article 8 challenge to be successful. That cannot be said to be the case. As far as Ms A is concerned, the sheriff has found, as he was entitled to, that the appellant only “sometimes” provides help around the house. There has been no finding in relation to the appellant’s alleged assistance in administering care. The sheriff has found that Ms A has a sister who lives in Queensferry. There is no basis within the findings in fact, or in any of the

submissions made to us, for the view that the appellant's extradition will be an exceptionally severe interference with Ms A's Article 8 rights anent the appellant. There will undoubtedly be interference with his right to a private life but no material was presented to us to suggest that that would be disproportionate. There was reference to the amount of time the appellant has spent in this country but precious little else by way of indication, for example, of any ties he had formed beyond Ms A.

[41] No distinct argument was presented to us on the passage of time in terms of section 14 of the Act. There is no challenge to the sheriff's conclusion that the appellant was a fugitive. That being so, the appellant could only succeed if he established that there were exceptional circumstances: *Kakis v Cyprus* [1978] 1 WLR 779, *Lagunioneck v Lord Advocate* 2015 JC 300; [2015] HCJAC 53. There are no such circumstances. We do not consider, in any event, that the passage of time, which we also considered in the wider Article 8 assessment, has rendered it unjust or oppressive to order extradition.

[42] It follows that there is no merit in any of the grounds of appeal before us. Leave to appeal is refused.