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IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL

FROM HER MAJESTY’S HIGH COURT OF JUSTICE (ADMINISTRATIVE COURT) (ENGLAND AND WALES)

B

UKSC/2011/0128 & 0129

Neutral citation below: [2011] EWHC 1145 (Admin)

BETWEEN:

C

THE QUEEN (ON THE APPLICATION OF)

(1) HH

(2) PH

Appellants

v

DEPUTY PROSECUTOR OF THE ITALIAN REPUBLIC, GENOA

Respondent

D

(1) THE OFFICIAL SOLICITOR

(2) JUSTICE

(3) CORAM CHILDREN’S LEGAL CENTRE

Interveners

E

ANNEX TO THE
CASE FOR THE INTERVENER JUSTICE

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- a. *Semen v Legnica District Court, Poland* [2011] EWHC 1960 (Admin) concerned the extradition of a man to serve a 6-month sentence for 10-year-old offence of handling stolen goods, and to face an outstanding charge upon a further handling allegation. Extradition would entail separation of three children (aged four years, two years and seven months, all born in the UK) from their father. The Court (in a nine-paragraph judgment, noting *Norris* and the judgment of Laws LJ in this case, concluded that: “...[t]he effect of extradition will be that the father would be separated from partner and children. But that is the regrettable consequence of crimes being committed which need to be punished, and in this case tried as well. Separation from family of this order is really of no real significance when it comes to the weighing exercise required for Article 8 purposes in extradition cases...” (at §7).

Auth. Tab
137

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APPENDIX

- Auth. Tab 115 b. ***Rzeczkowski v Provincial Court in Warsaw, Poland*** [2011] EWHC 1698 (Admin) concerned an EAW issued to enforce 2½ years of a 5-year sentence imposed in 1996 for an attempted robbery offence committed when the defendant was aged 17. He had been released from custody in Poland and was entitled to apply annually for the continuation of that release and had omitted to re-apply. The defendant had two children, one aged 11 born in Poland and another born in the UK. Both had grown up in this country and known no other. Having had regard to the “*relatively extreme case*” contained in **Norris** at §65, the High Court held that “*...I am bound to say that I take the view that this is very much on the borderline...The threshold set by Norris is a very high one and understandably because it is important that the judicial decisions of the states, who are party to the European arrest warrant, are recognised and are complied with in cases which have to be considered by the courts of this country. It is important, in my view, that the need for such compliance is recognised...There will be here a severe effect upon the family. I have to ask myself whether it is sufficiently severe, having regard to the example given by Lord Phillips and the very high threshold that is applied in Norris...Although, as I have said, I have a lot of sympathy for the appellant, I am afraid that in my judgment this does not reach the threshold which is required by Norris...*” (§§13 & 15-16). A
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C
- Auth. Tab 13 c. ***B v District Court in Trutnov and the District Court in Liberec*** [2011] EWHC 963 (Admin) concerned the request for a single mother of four children (aged nine, five, three and two) sought to serve a sentence of 20 months’ imprisonment for relatively minor dishonesty offences (falsely guaranteeing a £400 loan for a cooker; £1200 of shoplifting). Extradition would have resulted in the estranged father of the children looking after them and their removal from the UK. At §37 et seq, the High Court considered **Norris** and asked itself whether “*it is appropriate to consider whether this is a case in which in spite of the approach adopted in Norris, the article 8 rights of the claimant and her family constitute a bar to her extradition...*” (§57). Having considered a number of recent Article 8 extradition authorities, the High Court concluded that “*...These cases show the high threshold for refusing to order extradition because family factors make it disproportionate to do so...I appreciate the serious adverse consequences for the Claimant’s children and for the estranged husband if she was to be extradited but they are no worse than the consequences for many parents, who have to be extradited leaving children in this country. Nevertheless, the evidence adduced by the Appellant fails to show that it would not be proportionate to extradite her in the light of the high threshold set in Norris...” (§§63 & 68) (emphasis added). D
E*
- Auth. Tab 76 d. ***R (Bartosiewicz) v District Court Warszawa Praga, Warsaw*** [2011] EWHC 439 (Admin) concerned an EAW issued to enforce half of 7 months of a 12-month sentence for stealing a mobile phone in 2005, and for prosecution for theft from a motorcar and obtaining property by fraud in 2004. The defendant had a 2-year old child. The High Court observed that: “*...[t]he powers of the court dealing with an appeal of this kind are very limited. The European Extradition Warrant system is based on the courts of one country executing warrants issued by another, unless there are particular grounds for refusing to do so...there is nothing in his personal circumstances which could make his return unlawful under Article 8 grounds...*” (at §7 & 9). F
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- A** e. In ***Budaj v District Court of Presov, Slovak Republic*** [2011] EWHC 193 (Admin) the Appellant’s surrender was requested for three offences of theft, criminal damage and robbery dating from 2002-2003. He had six children, all of them very young (§11). The Court’s Article 8 assessment was as follows: “...regrettably in the extradition context Article 8 is almost always engaged and very often hard results, in personal terms, will sometimes arise. That is the inevitable consequence of extradition where someone faces imprisonment. Very often in consequence a family unit is sundered. True it is that Mr Budaj has established a family life, not only does he have a wife but a significant number of children, some of them young, as I have said; but I do not think that matter of itself raises a sufficient case under Article 8 to justify acceding to this appeal. The bar necessarily has to be set quite high in this regard ...” (at §14). Auth. Tab 18
- B**
- f. ***R (Stojkova) v District Court in Okresny, Slovakia*** [2010] EWHC 3532 (Admin) concerned extradition in respect of a conviction of 4 years’ imprisonment imposed in respect of possession of 3g heroin (dating from 2000). Prior to the sentence being enforceable, the Appellant had come to the UK and in the same year gave birth to twins. The Appellant’s husband remained behind in Slovakia. These facts were addressed in a single paragraph: “...Regrettably, however, it is often likely to be the case that females who are sentenced to custodial sentences do have to suffer the undoubted hardship that can arise thereby being separated from their children, and children may suffer likewise in consequence. But that in itself is not a justification for interfering...the appellant, rightly did not seek to press that point further...” (at §31) (emphasis added). Auth. Tab 109
- C**
- g. In ***R (Antonovic) v The Prosecutor General's Office (A Lithuanian Judicial Authority)*** [2010] EWHC 2967 (Admin), the defendant’s surrender was sought for three offences involving the theft of a mobile phone and damage to a car during the course of an attempt to steal it. At the time of his extradition the Appellant had a young wife and a recently born child. Difficulties existed in the relocation of the family to the requesting state. Having considered §65 of Lord Phillips’ judgment in ***Norris***, the High Court observed that: “...Against this one has to bear in mind decisions in cases since Norris which indicate that the courts continue to take a relatively severe approach to arguments under Article 8 in cases such as this... these offences were not merely trivial... While the appellant has had a family life in the United Kingdom it is not of long standing, and there is nothing in my judgment to show that it may not be fulfilled in some other country following his being dealt with in an appropriate way on return to Lithuania...” (at §§18 & 20) (emphasis added). Auth. Tab 71
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APPENDIX

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