



Press Summary

11 June 2025

Andrysiewicz (Appellant) v Circuit Court in Lodz, Poland (Respondent)

[2025] UKSC 23

On appeal from [2024] EWHC 1399 (Admin)

Justices: Lord Lloyd-Jones, Lord Sales, Lord Stephens, Lady Simler and Lord Burnett

Background to the Appeal

On 23 September 2020, the Circuit Court in Lodz sought Ewa Andrysiewicz’s extradition to Poland to serve a two-year penalty imposed in relation to four connected fraud offences committed between 2007 and 2008. The penalty was initially suspended for five years, but then ordered to be implemented in full as a result of her failure to comply with the conditions of suspension.

Following her arrest in London on 21 January 2023, Andrysiewicz opposed extradition on the basis that it would disproportionately interfere with her right to respect for her private and family life under article 8 of the European Convention on Human Rights (“ECHR”). In advancing her article 8 opposition she relied on the possibility that, if she succeeded in an application under the Polish Penal Code, she would not have to serve the remainder of her sentence. The district judge ordered Andrysiewicz’s extradition to Poland to serve her two-year sentence. The High Court dismissed her appeal. However, in light of the divergent approaches which have developed in the lower courts, the High Court certified two points of law of general public importance relating to the relevance of the possibility of early release in Poland:

“When the court is considering whether extradition pursuant to a conviction warrant would be a disproportionate interference with article 8 rights, (a) what weight can attach to the possibility that, following surrender pursuant to the warrant, the requesting judicial authority might, in exercise of its power under articles 77, 78, 80 and 82 of the Polish Penal Code, permit the requested person’s release on licence (“the early release provisions”); and (b) to what extent (if at all) should the court assess the likely merits of an application under the early release provisions, either that the requested person has made, or that he may make?”

Andrysiewicz was remanded in custody from the day of her arrest. As a result, by 21 January 2025, before her expedited hearing in the UK Supreme Court, Andrysiewicz had served the

equivalent of the entire sentence imposed by the Polish court. The Polish judicial authority withdrew the extradition warrant and the Supreme Court ordered her discharge. Nevertheless, on the application of both parties, the Supreme Court decided to hear the appeal to determine the points of law certified by the High Court.

Judgment

The Supreme Court unanimously determines that, save in rare cases, the article 8 ECHR assessment in extradition cases should take account only of the bare possibility of early release under the Polish Penal Code and accord little weight to it. As explained above, this decision does not affect Andrysiewicz, who has been discharged. Lord Lloyd-Jones and Lord Stephens give the judgment, with which the other Justices agree.

Reasons for the Judgment

The purpose of extradition arrangements is to secure the return of an individual to the requesting State to stand trial for an alleged criminal offence or, as in this case, to serve a sentence imposed under the laws of the requesting State [31]. While it is for the requesting State to decide matters of punishment and rehabilitation, under section 21 of the Extradition Act 2003, a UK judge must order the discharge of the requested person if their extradition is incompatible with the ECHR [12]. In most cases, extradition will interfere with the exercise of the requested person's right to respect for their private and family life under article 8 ECHR but will be a necessary and proportionate interference [33].

Under the Polish Penal Code, the Polish courts have a discretionary power to order the early release of offenders from prison on probationary licence, which may be accompanied by licence conditions [16]. The extent to which the possibility of early release affects the article 8 ECHR assessment remains unsettled in the lower courts [1], [16], [46]. In the present proceedings, Swift J in the High Court identified three possible approaches before concluding that the UK courts should go no further than the second [24]-[29]:

- (i) any application for early release is solely a matter for the Polish courts, to which the judge can attach no weight in the article 8 ECHR assessment (“**option one**”);
- (ii) the judge can acknowledge the existence of a power to release on licence but attribute little weight to it in the article 8 ECHR assessment, except in rare cases (“**option two**”); or
- (iii) the judge can assess the likely merits of an application for early release, applying the Polish criteria, and attach significant weight in the article 8 assessment to any “good prospects” or “real possibility” of success (“**option three**”).

The case law on the role of article 8 ECHR in extradition cases emphasises that the public interest in extradition weighs very heavily in the proportionality assessment, given the critical importance of the prevention of disorder and crime and of giving effect to reciprocal international arrangements. The interference with the article 8 ECHR rights (of the requested person or their family members) must be exceptionally severe to outweigh the importance of extradition. The nature and gravity of the offence, as well as the delay since the crimes were committed, may be material, although it is for the requesting State to set its own policy on sentencing. Cases in which a submission founded on article 8 ECHR will defeat the public interest in extradition will be rare [33]-[43], [65], [81].

If a requesting State operates an automatic system of early release, such that it is possible to calculate with confidence how it will operate in the case at hand, that system can be taken into account in the article 8 ECHR assessment. In an extreme case, in combination with other exceptionally compelling features, the article 8 ECHR interference may outweigh the public

interest in extradition. However, the judge must still consider that to refuse extradition would deprive the requesting State of the opportunity to impose appropriate licence conditions [45].

Discretionary systems of early release present greater difficulties. Under the Polish Penal Code, the Polish court has a discretion to release an offender on licence where there is a justifiable assumption, based on a wide-ranging list of matters, that the offender will respect the legal order after release. A UK judge will seldom have detailed knowledge of the matters on which the decision is based, the applicable standards in Poland, or the methods of assessing and attaching weight to each matter. Save in the most exceptional circumstances, a UK judge cannot accurately predict the outcome of a Polish early release application. That is especially so because, even after concluding that the offender will respect the legal order, it is still a matter of discretion for the Polish court as to whether to order release. The Polish court then considers three further exercises of discretion, which a UK judge cannot determine: when to order release; what licence conditions to impose on the offender during the probationary period for the benefit of the offender and the public; and the length of the probationary period. Moreover, as a matter of international comity, the early release decision is for the Polish courts to make and not for UK courts effectively to usurp [47]-[63], [68], [74].

In light of these practical difficulties, the demands of international comity and the inability of UK courts to impose licence conditions when ordering the discharge of a foreign offender, the Supreme Court rejects option three. The Supreme Court also rejects option one. Although it has considerable merit, realism dictates that the existence of an early release provision should be given some weight in the article 8 ECHR assessment [67]-[75].

Consequently, option two is the appropriate option. It will ordinarily be appropriate to take account of the bare possibility of early release but, save in rare cases, the UK courts should not embark on predicting the likelihood of the outcome of an application in Poland. That bare possibility adds little weight to the article 8 ECHR assessment. A rare case, in relation to which a UK court can predict the outcome of an early release application and attribute greater weight to that factor in the article 8 ECHR assessment, is one where there is agreed or uncontested evidence sufficient to demonstrate (a) that the requested person would be released under the Polish Penal Code upon an application, (b) when that release would take place, (c) what the probation period and licence conditions would be, and (d) that the inability of the UK court to impose a probationary period with conditions would not adversely affect the interests of the offender or the public [76]-[80].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)