Neutral Citation Number: [2019] EWHC 764 (Admin)

Case No: CO/1331/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/03/2019

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

LEENDERT VERSLUIS — **Appellant**

- and –

THE PUBLIC PROSECUTOR'S OFFICE IN ZWOLLE-LELYSTAD, THE NETHERLANDS — **Respondent**

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- -

Benjamin Seifert (instructed by **Sonn Macmillan Walker**) for the **Appellant**
Florence Iveson (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date: 21 February 2019

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Judgment Approved by the court for handing down (subject to editorial corrections)

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The Honourable Mr Justice Julian Knowles:

Introduction

1. This is an appeal by Leendert Versluis (the Appellant) under s 26 of the Extradition Act 2003 (EA 2003) with the permission of Sir Wyn Williams sitting as a High Court judge against the order for his extradition to the Netherlands made by District Judge Rose at Westminster Magistrates Court on 26 March 2018.

2. The grounds of appeal argued by Mr Seifert on behalf of the Appellant are as follows:

    a. The district judge erred in finding that it would neither be oppressive nor unjust to order the Appellant's extradition due to the passage of time since he became unlawfully at large, and thus that extradition was not barred by s 14 of the EA 2003.

    b. The district judge erred in finding that it would be in accordance with Mr Versluis's rights under Article 8 of the European Convention on Human Rights (the ECHR/Convention) to order his extradition, and thus that extradition was not barred by s 21.

    c. The district judge erred in finding that it would neither be oppressive nor unjust to order the Appellant's extradition in spite of his ill-health, and thus that extradition was not barred by s 25.

3. The hearing before me was an adjourned hearing from November 2018. That hearing did not take place because of the Appellant's admission to hospital and concerns about his health. There is an outstanding application for clemency by the Appellant to the relevant Dutch authorities on the grounds of his ill-health. However, although I have seen material which shows the application is currently under active consideration in the Netherlands, unless and until the European arrest warrant (EAW) for the Appellant is withdrawn, I must proceed on the basis that the Respondent wishes the Appellant to be extradited, as Ms Iveson confirmed that it did.

4. The Appellant's primary submission is that the judge should have discharged the Appellant on the evidence which was before her. Further or alternatively, it is submitted that if I am not minded to allow the appeal on that basis I should admit fresh evidence which is said to demonstrate a significant deterioration in the Appellant's health and which, when the *Celinski* balancing exercise is conducted afresh (see *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551), would result in a finding that extradition would amount to a disproportionate interference with the Appellant's Article 8 rights and, furthermore, extradition would be unjust and oppressive due to his health conditions and/or so barred by s 14 and or s 25.

Proceedings in the Netherlands

5. The Appellant is currently aged 65, having been born on 31 March 1953.

6. These proceedings are regulated by Part 1 of the EA 2003. The Netherlands has been designated as a Category 1 territory for the purposes of Part 1 by virtue of [2(2)] of

The Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (SI 3333/2003) as amended by the Extradition Act 2003 (Amendment to Designations) Order 2004/1898.

7. The EAW in this case was issued on 5 January 2011 and certified by the National Crime Agency on 5 September 2016. It seeks the Appellant's extradition so that he can serve the remainder of a sentence of 26 months in relation to four offences which are described as 'participation in a criminal organisation' and 'swindling'.

8. The domestic basis for the EAW is the judgment of the Amsterdam Court of Appeal dated 20 February 2009. The sentence imposed was a total of 26 months' imprisonment, of which 521 days are specified on the EAW as remaining to be served. The sentence was imposed in the Appellant's absence.

9. Box E of the EAW describes the Appellant's offences in the following terms:

   a. Between 1 January 2001 and 1 January 2003, he was convicted of participating in an organisation in Utrecht, Woerden and other countries in Europe which had, as its purpose, committing criminal offences. The offences were forgery of documents, swindling, and money laundering. Mr Versluis was the founder and director of this organisation.

   b. Between 5 April 2001 and 18 December 2001 in Utrecht, Woerden, Rotterdam and elsewhere, he induced Field Sea BV to surrender €304 940.30 by a false representation.

   c. Between 1 December 2001 and 19 February 2002 in Utrecht, Woerden, Rotterdam, Brielle and elsewhere in the Netherlands he, along with others, fraudulently induced Andromeda Financial Management to pay €80 000.

   d. Between 1 September 2001 and 28 January 2002, in Utrecht, Weorden Wene and Italle, he induced S. Curci to surrender €300 000 by misrepresentation.

10. Box F sets out that an EAW was issued by the Dutch Public Prosecutor on 19 May 2004 against the Appellant who, at that time, was held in custody in Belgium. He had been surrendered from Germany to Belgium on an earlier Belgian EAW for the same offences. He was then extradited from Belgium to the Netherlands on 25 June 2004.

11. The Belgian authorities requested that the Netherlands take over the criminal prosecution for the Belgian offences. This occurred on surrender. The Appellant was present with his lawyer on 1 October 2004, 15 December 2004 and 1 February 2005. On 1 February 2005, the District Court of Utrecht granted him temporary release which was effective from the following day. However, he and his lawyer were present at the trial on 7 June 2005.

12. On 7 June 2005 at the trial the District Court in Utrecht added the Belgian charges and the judge decided to stay the proceedings for an indefinite period of time. The summons for the 28 September 2006 was not served on the Appellant. That summons was later declared invalid.

13. On 20 September 2006 a summons was sent for the trial on 3 October 2006 to Mr Kremer (whose role is not specified, but was presumably the Appellant's lawyer). He said that he would forward it to the Appellant immediately. On 3 October 2006 the Appellant was not present but a lawyer said to have been 'explicitly authorised' was present on his behalf. The EAW states that pursuant to Article 279 of the Netherlands Code of Criminal Proceedings a case in which the defendant is absent but a lawyer has been authorised to act for him is a 'defended action'.

14. The Court's examination of the action concluded on 3 October 2006 and then the judgment was to be pronounced on 17 October 2006. On that day the two Belgian charges on the indictment were 'barred', apparently due to the protection of specialty which the Appellant enjoyed.

15. On 27 October 2006 a nominated lawyer filed an appeal on behalf of the Appellant. The notice of the appeal for the trial on 22 February 2008 was not served on him in person. On 12 February 2008 the letter was sent to an address in the UK which the Appellant had given. He was not present at the trial on 22 February 2008 but was represented by his nominated advocate, who stated that the Appellant had been informed of the hearing.

16. The appeal hearing was adjourned until 30 May 2008. On that occasion also the Appellant was absent. His nominated advocate stated that he had waived his right to attend the trial. On his behalf, on that date, the EAW states that his counsel declared: 'The defendant is aware of this trial and he waived his right to be present at the trial.' At a further Court of Appeal hearing on 10 October 2008 the Court was informed by his lawyer that the Appellant was aware of the hearing and had waived his right to be present but had recently been admitted to hospital. The lawyer said that the assumption was that the Appellant or his authorised counsel would be present at the next hearing. On that day the Court stayed the hearing until 6 February 2009. The summons was sent to an address in England on 10 November 2008 that had been given.

17. On 6 February 2009 the Appellant's nominated counsel said that the Appellant would have liked 'very much' to have appeared at the trial. He knew about the trial date but not through the summons. The lawyer said he was in contact with this client, who had been mistaken about the date of the trial. In addition, his health had also impeded his ability to appear.

18. On that day the case was adjourned to 20 February 2009, when Mr Versluis was sentenced to the term of 26 months. According to the EAW the following matters were taken into account:

> "… with regard to the duration of the sentence the court has taken into consideration in favour of the Defendant the fact that he is faced with serious health problems and psychological problems, which were caused by the murder of his son, among other[s] things. In addition the Court sees cause to partially compensate the Defendant for the time he was detained in custody in Germany, in the sentence to be imposed, since this period of time cannot formally be

> deducted in the sense of Article 27 of the Netherlands Penal Code, but the court considers it likely that the basis for the detention lay in more or less the same offences. Given that the length of the detention abroad is not completely known, the Court will decrease the duration of imprisonment to be imposed by four months."

19. On 24 February 2009 the Appellant's nominated counsel brought an appeal in the Supreme Court, however the appeal was dismissed on 27 October 2009. The sentence cannot be served after 27 October 2025 due to the Dutch statute of limitations.

20. Further information dated 24 January 2017 from the National Public Prosecutor's Office provided the following details:

    a. The Appellant was arrested on 25 June 2004 and interviewed. He denied the offences.

    b. He was present until the hearing on 3 October 2006. At the hearing his specifically authorised lawyer was present and was allowed to speak on the Appellant's behalf.

    c. Because of the above it was not necessary to inform the Appellant of the conviction. The fact that he was aware of the judgments can be inferred from the fact that he instructed a lawyer to appeal against the judgment in the Court of Utrecht and then appeal to the Supreme Court.

    d. On 26 October 2006 the Appellant's specifically authorised lawyer gave notice of appeal. The appeal hearing took place on 22 February, 30 May, 10 October 2008 and on 6 February 2009. Again, his specifically instructed lawyer was allowed to have the final reply. His authorised lawyer gave notice to appeal to the Supreme Court.

    e. Under Dutch law there is no obligation to cooperate with serving a prison sentence.

    f. After a prison sentence becomes final the decision is handed down to the central authority in charge of enforcement of sentences. They then investigate if there is a known address for the offender.

    g. A sentence that has been imposed should preferably be served as soon as possible after it becomes final.

    h. A person is permitted not to cooperate with the enforcement of sentences. It therefore takes some time before a convicted person serves a sentence.

    i. The Appellant's sentence became irrevocable on 27 October 2009 after the case was considered by the Supreme Court.

    j. The Appellant was free to remain or leave the Netherlands as he wished. He was not obliged to provide the authorities with his address. He was permitted to await

the decision of the Supreme Court, and there was no obligation to cooperate with the enforcement of the prison sentence. He has not actively avoided (the word in the original English translation is 'dodged') its enforcement.

Proceedings in the United Kingdom

21. The Appellant was arrested on the EAW on 28 November 2016 and was brought before a district judge at Westminster Magistrates' Court on the following day. No issues were taken regarding ss 4 or 7 of the EA 2003 relating to his prompt production or service of the EAW. The Appellant did not dispute being the person named on the warrant. He was remanded on conditional bail.

22. The case was considered by District Judge Rose at a hearing on 19 February 2018. The issues raised were as follows:

    a. Section 14: it was argued that the Appellant is not a fugitive and was thus able to rely on the bar in s 14 of the EA 2003. It was argued that it would be oppressive and unjust to order his extradition due to the passage of time since the alleged commission of the offences, given that he is not entitled to a full trial on the merits of the case.

    b. Section 20: it was argued that the Appellant was not deliberately absent from the hearing on 20 February 2009. He had had no opportunity to appeal that decision as the case has now been finally determined by the Supreme Court of the Netherlands. In those circumstances he should be discharged.

    c. Section 21/Article 8 ECHR: the Appellant suffers from a range of serious chronic diseases. Furthermore, his wife is suffering from the immense strain of these proceedings and the prospect of his extradition to the Netherlands.

    d. Section 25: it would be oppressive to order Mr Versluis's extradition in the light of his chronic medical conditions.

23. The district judge rejected these submissions and ordered the Appellant's extradition pursuant to s 21(3) of the Act. An Appellant's Notice was lodged in due course, and on 24 September 2018 Sir Wyn Williams granted permission to appeal, making the following observations:

> "There can be no doubt that the DJ had well in mind all the important factors relating to Section 14 and Article 8 and it may well be that section 14 is not open to the Appellant because he is in law a fugitive from justice. However, in the particular context of this case I am troubled by the unexplained delay of 5 years between the issue of the EAW and its certification. I am not convinced that the DJ's approach to this issue was, in context, correct and I am, therefore, persuaded that it would not be correct to say that this appeal has no realistic prospect of success."

24. As I made clear at the beginning of this judgment, the s 20 bar is no longer pursued and I am only concerned with the other three issues.

Chronology

25. The agreed Chronology of relevant dates is as follows:

31.03.1953	The Appellant born in Woerden, the Netherlands
2001-2003	Offences take place
19.11.2003	The Appellant arrested in Germany and detained
30.04.2004	The Appellant extradited to Belgium
19.05.2004	EAW issued by the Dutch Public Prosecutor
25.06.2004	The Appellant extradited to the Netherlands, formally arrested and interviewed
01.10.2004	The Appellant present at his trial with his attorney
15.12.2004	The Appellant present at his trial with his attorney
01.02.2005	The Appellant is granted temporary release, having been present with his attorney
07.06.2005	The Appellant present at his trial but the District Court in Utrecht stayed the proceedings indefinitely. The summons for 28th September 2006 was not served on The Appellant.
June 2006	The Appellant moves to London
20.09.2006	Summons sent for the trial on 3 October 2006 to Mr Kremer
28.09.2006	The Court declares the summons to be invalid
03.10.2006	The Appellant is not present but a lawyer 'explicitly authorised' is present on his behalf
17.10.2006	Two charges barred due to specialty protection. The Appellant convicted of other four offences
27.10.2006	Nominated counsel files an appeal
12.02.2008	The letter notifying the Appellant of the appeal is sent to an address in the UK
22.02.2008	Trial: The Appellant's advocate states that he was informed of the hearing. Adjourned to 30.05.2008

30.05.2008	The Appellant absent from the adjourned appeal hearing. Hearing stayed to 13.06.2009
13.06.2008	Case adjourned
10.10.2008	Summons not served in person but posted to an address in the UK
06.02.2009	Hearing. Adjourned to 20.02.2009
20.02.2009	Sentence made final by the Amsterdam Court of Appeal
24.02.2009	Appeal to the Supreme Court lodged
27.10.2009	The Supreme Court of the Netherlands dismisses the further appeal
01.01.2010	The issuing prosecutor's office has the task of tracing the Appellant
05.01.2011	EAW issued
February 2013	The Appellant hospitalised with atrial fibrillation
June 2013	The Appellant hospitalised with a detached retina
August 2013	The Appellant diagnosed with Addison's Disease
5.09.2016	EAW certified
28.11.2016	The Appellant arrested on EAW
29.11.2016	The Appellant appears at Westminster Magistrates' Court
19.02.2018	Extradition hearing
26.03.2018	The Appellant's extradition ordered
29.03.2018	Appeal lodged
24.09.2018	Permission to appeal granted
20.11.2018	Appeal hearing- adjourned
21.02.2019	Appeal hearing

The judgment of the district judge

26. The district judge's judgment can be summarised as follows.

27. In relation to the s 14 challenge, at [13] the judge indicated that she could not conclude to the criminal standard that the Appellant was a fugitive. She said that following his

release on bail he knew that he faced the possibility of a prison sentence in the Netherlands but he had not been under any obligation to surrender himself to serve his sentence.

28. At [24], having considered the decision of the Divisional Court in *Wisniewski v Regional Court of Wroclaw, Poland* [2016] 1 WLR 3750 she found that the Appellant had been unlawfully at large since 27 October 2009, the date upon which the Supreme Court dismissed his appeal.

29. At [25] she considered a period of eight years had to be taken into account for the purposes of s 14, and acknowledged that the proceedings had taken 'some time'. She also referred to the five-year delay by the NCA in certifying the EAW. She went on to say that the Appellant would have been aware of the existence of the EAW and therefore that he could not have acquired any sense of security about his position. But she also said that there is no information as to whether it was disclosed that he was still in the UK but 'there was always a UK address on the EAW. Enquiries could have been made. It is difficult to understand why the NCA was not alerted to that sooner.'

30. The judge then considered the seriousness of the offences and that significant sums were obtained.

31. In conclusion, she found that the significant changes in the period since Mr Versluis became unlawfully at large did not pass the high threshold that it would be oppressive to order his extradition (at [28]).

32. In relation to s 21 read with Article 8, at [30] *et seq* the judge considered the following factors in favour of extradition in her balancing exercise according to the principles in *Celinski*, supra:

    a. The public interest in extradition.

    b. The fact that decisions of a Part 1 territory should be afforded a proper degree of mutual confidence and respect.

    c. The fact that the Appellant faces a sentence of almost 18 months. The learned judge did not accept that there would be a further deduction to be made for the period of time spent in custody in Germany, and that it would be for the Dutch authorities to decide whether there should be further deductions.

    d. The offences were serious and resulted in significant financial loss.

33. The following factors weighed against extradition:

    a. The fact that Mr Versluis has lived in the UK for a considerable period since 2006. He has an established family life here and no apparent ties to the Netherlands. His wife is distressed at the prospect of losing him although she does not appear to be financially dependent on him.

    b. He has committed no criminal offences in the UK.

c. The offences were committed at least 15 years ago and the delay between issue and certification of the EAW was unexplained, even though the Dutch authorities had a London address for the Appellant as long ago as 2011. However, he cannot have had any false sense of security as he was well aware of the sentence he faced.

d. He is 'not a young man' and is in poor health. Extradition to the Netherlands to serve the sentence would 'inevitably involve some elevated stress.'

34. In conclusion, the judge found that, having considered the relevant factors the public interest in the Appellant's extradition for serious offences outweighed the counter balancing factors against extradition.

35. The judge considered s 25 at [36] *et seq* of her judgment. She accepted that the Appellant may need emergency treatment whilst in prison and that his mental health would require monitoring. However, she concluded that the medical evidence did not support a conclusion that it would be unjust or oppressive to order his extradition due to his mental and/or physical health.

Submissions on the appeal

The Appellant's submissions

36. The submissions made by Mr Seifert on behalf of the Appellant can be summarised as follows.

37. First, he submitted that the judge had been correct for the reasons that she gave not to conclude that the Appellant was a fugitive and thus that he was not debarred from relying upon s 14. He invited me to dismiss the Respondent's cross-appeal on this issue. He submitted that there was clear evidence from the Dutch judicial authority that the Appellant was permitted to leave the Netherlands at any time and that he was not required to remain there. He did not place himself beyond the reach of the judicial process in the Netherlands. Mr Seifert referred me in this regard to *Pillar-Neumann v Public Prosecutor's Office at Klagenfurt* [2017] EWHC 3371 (Admin), [64] ('…the essential question is therefore whether the Requested Person has knowingly placed himself beyond the reach of legal process. Fleeing the country, concealing whereabouts or evading arrest are examples of so doing').

38. In relation to oppression, Mr Seifert said that Box F of the EAW stated clearly that there was an awareness by the judicial authority that Mr Versluis was living in the UK as early as 12th February 2008 when a notice of the hearing was sent to the Appellant in London. Whilst the address may not have been correct the only reasonable inference which could have been drawn by the Dutch authorities was that the Appellant was residing in this country by that time. He was living here openly and there has been no explanation for the fact that there was a further delay until the EAW was issued on 5 January 2011 and even then not certified until 2016.

39. A statement from an NCA officer shows that an Interpol diffusion was received in 2011 (by the NCA's predecessor organisation, SOCA) which had no UK connection and no so checks were conducted. It was not until September 2016 that a UK address

was received. Mr Seifert made the point that the Appellant could have been apprehended some years before he was actually arrested if the Dutch had acted expeditiously on the information that they had as to the Appellant's whereabouts in the UK.

40. Mr Seifert said that the Appellant suffers from a rare combination of chronic health conditions which have only worsened in the period since his case became final following the dismissal of his appeal by the Supreme Court in October 2009, at which point time started to run for the purposes of s 14:

a. Dr Grabicka's report refers to the Appellant's hospitalisation with atrial fibrillation in February 2013, a detached retina in June 2013 and subsequent loss of vision in his right eye.

b. In August 2013 he was diagnosed with Addison's Disease due to the failure of his pituitary gland. He has a particularly rare form of this disease. In 2014 he was hospitalised with arrhythmia and he initially did not respond to medication.

c. In 2015 he underwent an appendectomy and has suffered regular Addison's crises since that date. He has had severe bouts of heart arrhythmia.

d. Since 2017 he has been diagnosed with on-going psychological problems including Post-Traumatic Stress Disorder and regular attacks of atrial fibrillations.

e. He has a fear of being in public places and can also suffer from uncontrolled diarrhoea.

f. He has an overactive bladder.

g. Dr Grabicka has indicated that the Appellant's heart condition and Addison's disease are life-long conditions and affect his day to day life. They are considered disabilities. They are not currently controlled with medication and may pose a significant danger to his life at any time.

h. The doctor recommends that he avoids any stressful situations, travel or anything that would trigger or compound his medical conditions and complications he already has.

i. Dr Grabicka concludes that Mr Versluis is not fit to face any form of detention. His mental and physical state is likely to deteriorate and pose a danger to his life if he is placed in prison.

j. His claustrophobia has been considered to be so severe that he requires the assistance of an open MRI machine.

41. Overall, Mr Seifert said the Appellant had been living openly in the UK and could and should have been arrested and extradited long before these proceedings commenced. During the period of delay his health has seriously worsened such that it would now be oppressive to extradite him. Mr Seifert said that the district judge had erred in her

treatment of the s 14 issue in a number of ways and in particular, she had failed to take into account the fact that he had already spent time in custody in three jurisdictions and had the serious health problems set out earlier in this judgment.

42. In relation to s 21/Article 8, Mr Seifert submitted that although the EAW states that the Appellant has a further 521 days to serve, in fact, the period to be served must be less because of the time that the Appellant spent on remand in Germany and Belgium. He pointed to Article 26 of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), which provide that the issuing Member state shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State. He said that about 472 were left to serve and there had to be a further reduction because of provisions of Dutch law concerning early release. Foreign law is, of course, a question of fact, and Mr Seifert candidly admitted there was no evidence before me (eg, from a Dutch lawyer) to support his submissions.

43. Mr Seifert also adopted and relied upon the evidence concerning the Appellant's health. He pointed out that the Appellant had experienced the murder of his son and had already spent a significant amount of time in custody in three different countries in relation to these offences. He said that there had been periods of unexplained delay during the 15 years since the offences were committed and 'this dilatory conduct in relation to an extremely sick man evidently undermines the public interest in his extradition'. He also submitted that in the judge's *Celinski***,** supra, balancing exercise the district judge had made errors of fact including failing properly to consider the lack of expedition between issuing the EAW and its certification in the UK (cf *Stryjecki v District Court in Lublin, Poland* [2016] EWHC 3309 (Admin), [70(vi)] ('…long unexplained delays can weigh heavy in the balance against extradition); *Jankowski v Regional Court in Bialystok, Poland* [2015] EWHC 2522 (Admin); *Miller v Polish Judicial Authority* [2016] EWHC 2568 (Admin);*Oreszczynski v Krakow District Court, Poland* [2014] EWHC 4346 (Admin)) and failing to consider properly the severity and complexity of the Appellant's medical conditions.

44. Mr Seifert also relied on the Appellant's medical history in support of the argument that it would be unjust and oppressive to extradite him by reason of his physical and mental condition and thus that extradition is barred by s 25 of the EA 2003. He relies in particular on Dr Grabicka's opinion that detention would be extremely dangerous for him and that medication would not adequately address his physical difficulties because it appears that his conditions are not currently under control. Mr Seifert also applied for permission to adduce and rely upon updating medical evidence.

The Respondent's submissions

45. On behalf of the Respondent, Ms Iveson (who did not appear below) confirmed that pending the outcome of the Appellant's request for clemency, the Respondent wished to pursue its request for his extradition pursuant to the EAW.

46. In relation to s 14 Ms Iveson submitted, first, that the Appellant was a fugitive, and the judge should have so found, so that he was barred *in limine* from relying upon s 14: *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, pp782-3 *Gomes v*

Republic of Trinidad and Tobago [2009] 1 WLR 1038, [26-27]. She said that it was abundantly clear that the Appellant was in touch with his lawyers, provided instructions, and knew about the progress of his case. His decision to remain in the UK once his sentence became final in October 2009 was therefore one to knowingly place himself beyond the reach of the authorities. He was hence a fugitive from justice from the date on which his sentence became final on 27 October 2009, which was also the date he became unlawfully at large.

47. If she was wrong about that, Ms Iveson submitted that the judge did not err in her application of s 14: the Appellant knew at all times that he was wanted by the Dutch authorities to serve the rest of his sentence and the judge took proper account of the Appellant's complex medical conditions and concluded that extradition was not oppressive by reason of the passage of time. Also, Ms Iveson said that the judge had given careful consideration to the delay between issue and certification of the EAW. She pointed out that the judge did not accept much of the Appellant's evidence, including that he believed that he had served his sentence. At [23] and [26] of the judgment the judge noted that culpable delay could affect the court's assessment as to whether the s 14 bar is met, but overall the judge was not wrong in her assessment that it was not met in this case.

48. In relation to Article 8, Ms Iveson reiterated her submission that the Appellant was a fugitive from justice and that this factor should weigh heavily in favour of extradition in the Article 8 balancing exercise. She said that the judge took account of the time the Appellant had served in prison, and that she was right to conclude that the remaining sentence was set out correctly in the EAW. Ms Iveson said that the judge took the Appellant's medical issues fully into account, and that in any event the evidence of Dr Grabicka had to be approached with a degree of circumspection: she is an internal medicine doctor, she is not a specialist qualified to give an opinion on issues related to cardiology and endocrinology. The judge noted that her opinion regarding fitness for detention was based on her assessment of reports of other doctors about conditions that are not apparently within her area of expertise. Overall, Ms Iveson submitted that the judge's conclusions were open to her and were not wrong, which is the test I have to apply: *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [26]; *Surico v Public Prosecutor of the Public Prosecuting Office of Bari, Italy* [2018] EWHC 401 (Admin), [27].

49. In relation to s 25 Ms Iveson said that, as the single judge noted in granting permission, the district judge plainly had the Appellant's complex medical conditions in mind. She noted that he was at risk of atrial fibrillation and acute worsening of his adrenal gland function in stressful situations. Ms Iveson said the judge plainly did consider that detention would be more serious for the Appellant than a typical detainee. She noted that if a crisis were to occur he would require emergency treatment. The judge relied on the presumption that the Dutch prison authorities would provide appropriate treatment. Ms Iveson pointed to recent information from the Dutch authorities which made clear that they were aware of the Appellant's medical conditions and were seeking information about them.

50. Accordingly, Ms Iveson said that the appeal should be dismissed.

Discussion

Preliminary matters

51. I begin with the preliminary issues of:

    a. how long the Appellant has left to serve in the Netherlands; and

    b. whether the judge was wrong in her conclusion that he was not a fugitive.

52. I can deal with the first point shortly. The EAW states that the Appellant was sentenced to 26 months imprisonment and that there are 521 days left to serve. The warrant goes on to give details about what factors were taken into account by the Amsterdam Court of Appeal on 20 February 2009 when it imposed that sentence. Further information from the Public Prosecutor dated 23 January 2012 and 24 January 2017 both confirmed the figure of 521 days. Is it open to me to go behind these clear statements ? In *Cimieri v Court of Agrigento, Italy* [2018] 1 WLR 2833 this Court reviewed the authorities on when extrinsic evidence may be admitted to undermine statements in an EAW (in that case, in relation s 12A). Sir Wyn Williams held that there was no inflexible rule against the admission of such evidence, and that admissibility will depend upon a host of factors that will need to be considered on a case-by-case basis (at [25]). But it is obvious that there has to be at least some evidence before the Court before it can consider whether to go behind clear statements in an EAW. In the present case there was none, but simply Mr Seifert's assertions about what he said Dutch law was.

53. I turn to the second issue. In my judgment the judge was not wrong to find that the Appellant was not a fugitive and that he was not therefore debarred from relying upon s 14. That is for the following reasons.

54. In *Wisnieski v Regional Court of Wroclaw, Poland* [2016] 1 WLR 3750 the Divisional Court considered the concept of being a fugitive in the context of Polish defendants who were subject to suspended sentences and who had left Poland and breached the conditions of their sentences, which were then activated. At [38] Lloyd-Jones LJ (as he then was) said that the authorities of *Kakis*, supra, and *Gomes*, supra, had given rise to the non-statutory concept of a fugitive who is precluded from invoking the consequences of his conduct as a bar to extradition. He said at [50] that later cases, such as *Pinto v Judicial Authorities of Portugal* [2014] EWHC 1243 (Admin) and *Salbut v Circuit Court in Glawice* [2014] EWHC 4275 (Admin), had resulted in a confusion between the issues of whether a person is unlawfully at large within s 14(b) of the EA 2003, and the issue of whether a person is to be considered a fugitive in the sense in which that term is used in *Gomes*, supra, to refer to a status which precludes reliance on passage of time as founding a statutory bar to extradition when it results from the fugitive's own conduct. At [58] he said that the term 'fugitive' is not a statutory term but one developed in the case law as barring reliance on s 14. Before the rule can apply, it must be established to the criminal standard: *Gomes*, supra, [27].

55. In *Kakis*, supra, Lord Diplock at pp782-3:

> "'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, "oppressive" as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair. Delay in the commencement or conduct of extradition proceedings which is brought about by the accused himself by fleeing the country, concealing his whereabouts or evading arrest cannot, in my view, be relied upon as a ground for holding it to be either unjust or oppressive to return him. Any difficulties that he may encounter in the conduct of his defence in consequence of the delay due to such causes are of his own choice and making. Save in the most exceptional circumstances it would be neither unjust nor oppressive that he should be required to accept them.'

56. Referring to this paragraph as 'Diplock 1' *per* Lord Brown's description in *Gomes,* supra, Lloyd-Jones LJ said at [59] of *Wisnieski,* supra:

> "On behalf of the appellants, Mr Jones submits that in the passage in his speech in Kakis's case referred to in *Gomes's* case as Diplock para 1, Lord Diplock was limiting the concept of a fugitive to cases where the person had fled the country, concealing his whereabouts or evading arrest. However, I consider that these were merely examples of a more general principle underlying *Kakis's* and *Gomes's* cases. Where a person has knowingly placed himself beyond the reach of a legal process he cannot invoke the passage of time resulting from such conduct on his part to support the existence of a statutory bar to extradition. Rather than seeking to provide a comprehensive definition of a fugitive for this purpose, it is likely to be more fruitful to consider the applicability of this principle on a case by case basis. Similarly, a process of sub-categorisation involving 'quasi-fugitives' and 'fugitives not in the classic sense' is unlikely to be helpful."

57. In *Pillar-Neumann,* supra, at [64] the Divisional Court said that:

> "The essential question is therefore whether the Requested Person has knowingly placed himself beyond the reach of legal process. Fleeing the country, concealing whereabouts or evading arrest are examples of so doing."

58. In light of these principles, I find it impossible to say that the judge's conclusion that the Respondent had not proved to the criminal standard that the Appellant was a fugitive was wrong. My first reason is that this was a question of fact for the judge, and her finding is therefore to be accorded great respect: *Government of Rwanda v Nteziryayo* [2017] EWHC 1912 (Admin), [21]; *Wiejak v Olsztyn Circuit Court of Poland* [2007] EWHC 2123 (Admin), [23].

59. Secondly, the chronology which I have set out shows that far from placing himself

beyond the reach of the Dutch legal process, the Appellant actively participated in it, either personally by being present at hearings, or else by instructing a lawyer to act for him in the proceedings, up to and including appealing to the Supreme Court. Thirdly, as the further information dated 24 January 2018 explained, the Appellant was free to remain or leave the Netherlands as he wished. He was not obliged to provide the authorities with his address. He was permitted to await the decision of the Supreme Court and was not under any obligation to cooperate with the enforcement of the prison sentence. Nor did he actively avoid its enforcement. The most that can be said is that he did not return to the Netherlands to serve his sentence once it became enforceable. As to that, not only was there no requirement under Dutch law for him to that, even if there had been, that would not necessarily have made the Appellant a fugitive. In *Pillar-Neumann*, supra, the Issuing Judicial Authority argued, and the district judge found, that the defendant was a fugitive because in 2004 she became aware that a domestic warrant for her arrest had been issued in Austria and that, by failing to leave her home in the UK and failing to go to Austria so that she could be arrested pursuant to that warrant, she was evading arrest and was therefore a fugitive. At [68]-[70] the Court rejected this submission:

> "68. In my judgment, even if she was aware of the domestic warrant, which is disputed, lawfully remaining in her established country of residence does not mean she was evading arrest or was a fugitive.
>
> 69. She was not fleeing the country or concealing her whereabouts. She was not taking any positive steps to evade or avoid arrest. She was simply carrying on living in her country of residence, as she was lawfully entitled to do.
>
> 70. Nor was she knowingly placing herself beyond the reach of a legal process. She took no positive steps to place herself anywhere. The Respondent's case is that she was somehow obliged to place herself within the reach of a legal process instituted in another country and to leave and give up her home and lawful residence in the UK in order to do so. Not surprisingly, we have been shown no case in which it has been found, or even suggested, that failing to act in this way makes someone a fugitive.

60. Mr Seifert was right in his submission that the Appellant in the present case is in a similar position to Ms Pillar-Neumann, and for the same reasons was not a fugitive.

61. It follows that I reject the Respondent's challenge to the judge's finding on this issue. The Appellant was not debarred *in limine* as a fugitive from relying upon the statutory bar in s 14 of the EA 2003. I will deal with the merits of the s 14 submission later in this judgment.

Section 25

62. Although Mr Seifert placed s 14 at the forefront of his submissions, it seems to me that s 25 is the correct starting point. Although a defendant's health may be relevant

to a number of different bars to extradition under the EA 2003, including s 14 (see eg, in relation to the identical provision in the Extradition Act 1989, *R (Warren) v Secretary of State for the Home Department* [2003] EWHC 1177 (Admin); *Re Davies* [1998] COD 1)); Articles 3 and 8 of the Convention read with s 21 (see eg *Auzins v Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 802 (Admin); *R (Prosser) v the Secretary of State for the Home Department* [2010] EWHC 84 (Admin)) s 25 is the *lex specialis* in relation to health and extradition. Also, if the defendant's state of health coupled with the deleterious effects of substantial delay are not sufficient to bar extradition under s 14, then health alone is generally unlikely to give rise to the bar under s 25, given that both sections impose the same test of injustice or oppression, as I shall explain shortly. Similarly, if ill-health and other factors relevant to Article 8 do not give rise to such hardship as to render extradition disproportionate, then ill-health alone is unlikely to satisfy the test in s 25. On the other hand, even if extradition is not barred by that section, other matters may tip the balance in relation to s 14 or Article 8. It therefore makes sense to begin with s 25.

63. Section 25 provides:

> "Physical or mental condition
>
> (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
>
> (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
>
> (3) The judge must —
>
> (a) order the person's discharge, or
>
> (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

64. The terms 'unjust' and 'oppressive' in s 25 bear the same meaning as in s 14: *Government of the Republic of South Africa v Dewani* [2013] 1 WLR 82, [74]. The term 'unjust' is directed primarily to the risk of prejudice to the accused in the conduct of the trial itself. The term 'oppressive' means hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration. In relation to s 25, that means the defendant's state of health at the point at which the issue is being considered by the Court is such as to give rise to oppression in the event he is extradited. Oppression means more than just hardship, which by itself is not enough: *Dewani* at [67] - [68]. The enquiry under s 25 is highly fact sensitive. As the Court said in *Dewani* at [76]-[77]:

> "76 In such a case what is unjust or oppressive is fact sensitive. Take the case of a person who is recovering from an acute injury or physical illness where the prognosis for recovery is certain. In such circumstances, making an immediate order would be unjust or oppressive if there was a real risk to life and a short delay would

> obviate the risk. There is virtually nothing by way of detriment to the interests of justice in such a delay.
>
> 77 The test is more difficult to apply where the quantification of the degree of risk to life is less certain and the prognosis is also less certain. In such a case, the interests of justice in seeing that persons accused of crimes are brought to trial have to be brought into account."

65. I am not concerned in this case with injustice. The Appellant has had his trial and been convicted and is wanted to serve his remaining sentence. The issue before me is one of oppression. As to that, the medical treatment and facilities in the issuing Member State must be taken into account in determining whether extradition would give to oppression. There is a presumption that EU Member States will provide adequate prison medical facilities: *Magiera v District Court Of Krakow, Poland* [2017] EWHC 2757 (Admin), [34]. However, as I also observed in that case, there may be cases where the defendant's medical condition is of a type or complexity such that that general presumption might not be sufficient, and something more by way of detailed information or assurance might be required to avoid the s 25 bar. But equally, in *Mikolajcyk v Wroclaw District Court* [2010] EWHC 3503 the Divisional Court held that when considering the quality of medical care likely to be received, it is not necessary for there to be parity with the conditions in the UK. The test is whether the difference in treatment would mean that extradition would be oppressive.

66. I begin by considering the s 25 issue on the evidence as it was before the judge below, as Mr Seifert invited me to do. I reiterate that the question for me is not what I would have decided had I been sitting as the judge conducting the extradition hearing under Part 1. In other words, I am not concerned with a re-weighing of factors on the basis of which I can reach my own conclusion unconstrained by the district judge's decision. My task is to determine whether the district judge has erred in such a way which justifies this Court in saying she should have answered the statutory question differently: *Surico v Public Prosecutor of the Public Prosecuting Office of Bari, Italy* [2018] EWHC 401 (Admin), [30].

67. The judge summarised the medical evidence at [14]-[17] of her judgment. Dr Kriljes, a psychologist, concluded that although the Appellant was exaggerating some of his symptoms, he suffers from 'mild to moderate PTSD' following his son's murder in 2002. She said that he would benefit from treatment such as cognitive behavioural therapy. She also said that his mental state would likely deteriorate if he were to be returned to prison. The judge noted, with regard to the doctor's treatment suggestion, that there was no evidence that the Appellant had sought such treatment in the year since report was prepared in February 2017.

68. The judge then referred to the evidence that the Appellant had had cancer in 2007 which had required surgery, and that he had had part of his prostrate removed, as a result of which he suffered from continence problems. In 2013 he lost the sight in his right eye. He was also diagnosed with vasovagal syncope syndrome and hyperkaelimia. A consultant cardiologist, Mr Collins, said that the Appellant is taking an anticoagulant drug to protect against vascular embolic episodes from the left atrium which is increased in frequency with atrial fibrillation. He also has Addison's Disease. Mr Collins said that the Appellant should avoid stressful situations as they

will increase his risk of going into atrial fibrillation and increase his risk of destabilising because of Addison's disease. Evidence from Dr Stevenson shows that the Appellant also has secondary adrenal failure which is a lifelong condition treated with hydrocortisone replacement therapy. He said that stress can result in an acute worsening of the adrenal gland function (an Addisonian crisis) which can be life threatening and requires emergency admission and treatment.

69. The judge also referred to two reports from Dr Grabicka dated 2 November 2016 and 25 October 2017. She is an internal medicine doctor and an occupational health consultant. Each of her reports is largely a summary of the medical history of the Appellant prepared from the records of other doctors and from information provided by him. Her report of 2017 recounts incidents of atrial fibrillations on dates in that year and the results of a then recent heart scan. She also suggests that the Appellant should avoid 'any stressful situation, travel, or anything that could trigger/compound the medical conditions and complications he already has'. In the 2016 report she offered opinions about two things which appeared to be outside her area of expertise: that the Appellant is not fit to plead and that he is not fit to be detained. The judge said that counsel for the Respondent (then Ms Pottle) had challenged Dr Grabicka's qualification to give such opinions. She is not a psychiatrist; she is not a cardiologlst; she is not an endocrinologist. The judge recorded that Mr Seifert had conceded that those conclusions could not be relied upon. In the 2017 report Dr Grabicka concluded that the Appellant's 'heart condition and Addison's disease are life long and affect his day to day life .... Both conditions are not fully controlled at present with current medication and may pose a significant danger to his life at any time'. She offered the opinion that the Appellant 'is not fit to face any form of detention'. The judge said that this conclusion was based upon her assessment of reports by other doctors about conditions that were not apparently within her area of expertise. The judge said that although these other doctors advised against stressful situations, none of them concluded that the Appellant was not fit to be detained.

70. From all of this, it is plain that the judge recognised that the Appellant is not a well man (and indeed, she expressly said as much in relation to Article 8 at [34(4)] of her judgment). It is clear that the judge had the full medical picture well in mind. There was a considerable amount of medical evidence before her which she succinctly and admirably summarised in her judgment.

71. The judge's central conclusion on s 25 is contained in [39] of her judgment:

> "There is clear information that Mr Versluis is at risk of atrial fibrillation and an acute worsening of his adrenal gland function in stressful situations. If this were to happen, Mr Versluis would need emergency medical treatment. It is also the case that his mental health would require monitoring and treatment as it is likely to deteriorate if he is returned to prison. There is no reason to think that the Dutch prison authorities cannot be relied upon to provide adequate treatment. The fact that Mr Verslius has had advice that he should avoid stressful situations cannot lead to a conclusion that he should not serve this sentence on the basis that it would be unjust or oppressive."

72. Mr Seifert attacked this conclusion on three grounds. First, he said that the judge failed adequately to consider the medical evidence which, said Mr Seifert, showed that notwithstanding he might be treated in a Dutch prison, the effects of imprisonment on him would be more deleterious than they would be on a younger or fitter prisoner. Second, Mr Seifert said that the last sentence in [39] oversimplified the position. Third, it was submitted that the judge had 'failed to apply any scrutiny to the overwhelming medical evidence that the incarceration of Mr Versluis would have a catastrophic effect on him'.

73. None of these three points taken alone or together in my opinion are sufficient to provide a basis for saying that the judge's conclusion was wrong. As I have said, she carefully and accurately summarised the medical evidence and she referred a number of times to the various doctors' opinions that the nature of the Appellant's ill-health is such that he should avoid stressful situations. She had that point very well in mind when she considered whether the evidence in this case met the threshold test of oppression. It is impossible to say that she somehow misunderstood the medical evidence or left some important part of it out of account in her overall assessment.

74. In considering the question of oppression, the judge was bound to take into account the medical treatment that would be available to the Appellant in the Netherlands. She referred at [38] to the decision of Hickinbottom J (as he then was) in *Blazsak v Regional Court in Poland* [2016] EWHC 2412 (Admin). In that case, the appellant had a number of serious conditions, including long term *sequalae* from serious head injuries, which were not easily treated. The evidence showed he required monitoring every two to three hours, close supervision of his medication, and easy and urgent access to acute neurological services at times of prolonged fitting or if he suffers a head injury as a result of a fit. In holding that extradition was not barred by s 25, Hickinbottom J said at [15]:

> "15. It is clear that the Appellant suffers from a medical condition, the treatment and care for which is challenging. However, in considering whether it is oppressive to extradite a requested person, regard must be had to the safeguards which exist under the domestic law of the requesting state to protect the requested individual when detained."

75. In light of this principle – which is mirrored in the cases which I referred to earlier at [65] - I am satisfied that the district judge's approach was correct when she said that there was no reason to think that the Dutch prison authorities cannot be relied upon to provide adequate treatment for the Appellant.

76. This conclusion is reinforced by three documents from the Netherlands. On 19 October 2018 a medical advisor to the Dutch Ministry of Justice wrote to Dr Grabicka in the following terms:

> "In order to be able to assess where and when this person could serve this sentence and to inform the institution's doctor about your patient's state of health, I would like to be informed about his person's current physical state of health in connection with medication, the nature and seriousness of his disorder as well as the treatment and expected duration thereof."

77. Also, in further information dated 20 November 2018 and 11 February 2019 the National Public Prosecutor's Office made clear that the Appellant's health was being actively investigated and considered in connection with his clemency petition. It follows from all of this that in the event that his petition is denied and he is extradited, the relevant Dutch authorities will be fully sighted on his health needs, and it can be presumed that those needs will be treated appropriately.

78. In my judgment, therefore, the judge was not wrong to reach the conclusion she did on s 25 on the material before her.

79. I turn to the medical evidence that has arisen since the extradition hearing. I give leave for this to be relied upon. Although there is no exception for medical evidence to the rules governing the reception of fresh evidence in extradition appeals set out in *Szombathely City Council, Hungary v Fenyvesi* [2009] 4 All ER 324 (see eg *R(Hewitt and Woodward) v First Instance and Magistrates Court Number One of Denia, Spain)* [2009] EWHC 2158 (Admin), [20]-[23]), where s 25 is relied upon, the Court considering the matter will generally wish to be apprised of the up to date medical position in cases where the appellant has a long term condition and there may have been material changes since extradition was ordered. Where fresh evidence is relied upon on an appeal it is for the appellate court to decide the s 25 question for itself in light of all the evidence: *Magiera*, supra, [30]; *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26].

80. The evidence before me arising since the date of the extradition order are as follows. There is a letter from the Appellant's GP, Dr Parry dated 30 July 2018. This essentially confirms the various diagnoses which the judge set out in her judgment. There is also a hospital discharge summary report dated 12 November 2018 following his admission three days earlier following shortness of breath and chest pain. He underwent cardiac investigations following his admission. The discharge report requested that the Appellant's GP review him. There is also a letter from Dr Grabicka dated 13 November 2018 in reply to the Ministry of Justice's request for information that I referred to earlier. This again set out his history and Dr Grabicka's opinion that he is not fit to be detained.

81. In my opinion none of this material takes matters much further. Apart from the brief hospital admission in November 2018 there does not appear to have been any marked deterioration in the Appellant's health since March 2018 so as to cause me to reach a different conclusion from the district judge. For the reasons given earlier Dr Grabicka's opinion that the Appellant is not fit to be detained is not something I should place any weight on.

82. I therefore reject the ground of appeal relating to s 25.

Section 14

83. Mr Seifert submits that the judge should have held that it would be oppressive to extradite the Appellant by reason of the passage of time. In other words, he submits that the judge should have held that extradition is barred by s 14 of the EA 2003. I have already held that the Appellant is not a fugitive and not therefore debarred from relying on s 14.

84. Section 14 provides:

> "A person's extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have –
>
> (a) committed the extradition offence (where he is accused of its commission), or
>
> (b) become unlawfully at large (where he is alleged to have been convicted of it)."

85. I have already set out the meaning of the terms 'unjust' and 'oppressive' at [64]. As I said in relation to s 25, because the Appellant has been convicted, I am only concerned on this appeal with the issue of oppression. In *Gomes*, supra, [31], the House of Lords said the test of oppression will not readily be satisfied and that mere hardship, a commonplace consequence of an order for extradition, will not suffice.

86. The statutory predecessors to s 14 are s 10 of the Fugitive Offenders Act 1881 (as to which, see *Government of India v Narang* [1978] AC 247, 271), s 8(3) of the Fugitive Offenders Act 1967 and s 11(3) of the Extradition Act 1989, the latter two of which are in materially identical terms to s 14. There is, accordingly, a considerable body of case law on the application of s 14, and the principles are well-settled.

87. A refusal to return the defendant must be based on injustice or oppression caused by the passage of time as it operated in the circumstances of the particular case to give to that particular passage of time a quality or significance which leads to the conclusion that return would be unjust or oppressive: *Kakis*, supra, p785. In other words, delay must have operated as the 'cradle of events' giving rise to injustice or oppression in order for s 14 to be engaged: *Kakis*, supra, p790. A sense of false security engendered in the defendant is also a relevant consideration. If the actions of the requesting state or authority have led him to believe that he will not be extradited then it may be oppressive if it then proceeds to try to do so: *Kakis*, supra, p790.

88. Oppression is primarily concerned with what would not have happened had the defendant been prosecuted with reasonable promptitude, and includes an assessment of the requested person's wider circumstances, including where relevant the impact on his family: *McKenzie v Examining Court No.9 Palma de Mallorca (A Spanish Judicial Authority)* [2008] EWHC 3187 (Admin) at [32].

89. It is common ground between the parties that the Appellant became unlawfully at large on 27 October 2009 when his appeal was dismissed by the Supreme Court and he became liable to serve his sentence. The period to be considered begins at that date and ends at the date of challenge, ie, the time when the matter was considered by the district judge in March 2018. Hence, the period in question is some eight years and five months.

90. As with s 25, the question for me is whether the judge's conclusion that it would not be oppressive by reason of the passage of that period of time to extradite the

Appellant was 'wrong' in the sense I explained earlier. I am not free simply to substitute my own view for that of the district judge.

91. The judge's key reasoning in relation to s 14 is at [25] – [28] of her judgment. In summary, she said that a period of over eight years (from October 2009 – March 2018) was to be taken into account; the extradition proceedings had taken some time because of the Appellant's ill-health; both he and his wife suffer from chronic long term health conditions, and his physical health, if not his mental health, had deteriorated during the relevant period; the five year period from 2011 when the EAW was issued until 2016 when it was certified fell to be taken into account; however, throughout the majority of that time the Appellant was aware of the EAW and cannot have acquired any sense of security about his position; also, enquiries could have been made and the NCA could have been alerted sooner. On the other hand, she said that the seriousness of the offences had to be taken into account and she noted that significant sums of money (over €680 000) had been obtained. Overall, she concluded at [28]:

> "The significant changes during the relevant period have been his greater ill-health and obviously his increased age. I have not been able to conclude that the high threshold has been passed that would, in consequence, make it oppressive to order his extradition in all the circumstances."

92. Mr Seifert attacks the judge's reasoning and conclusions on four grounds. First, he says the judge was wrong at [26] to have concluded that during the five-year period from 2011 to 2016 the Appellant was aware of the EAW. That criticism is not justified. At [10] the judge recorded the Appellant's evidence as follows:

> "When giving evidence he suggested that it was only when he applied to renew his passport in 2011 that he became aware that there was a 'problem'. He instructed a lawyer to investigate and was told that the EAW had been issued."

93. There was before the district judge a letter from the Public Prosecutor to the Appellant's Dutch lawyers dealing with the sentence passed by the Court of Appeal on 20 February 2009. This was sent in reply to a letter from those lawyers. The Public Prosecutor's letter made it abundantly clear that the Appellant had a prison sentence to serve in Netherlands. Furthermore, at [11] and [12] the judge rejected much of the Appellant's evidence about what he knew of the legal proceedings, saying that it did not make any sense.

94. From all of this, the judge was right to conclude that the Appellant knew throughout the relevant period that his return was sought pursuant to an EAW to serve the sentence of imprisonment imposed in October 2009.

95. Next, Mr Seifert submitted that the Appellant had travelled to and from the Netherlands during the relevant period, and must from that have acquired a sense of security. There is no evidence of such travel. It is not mentioned in his proofs of evidence nor does the judge make any such finding. I should make clear that after

receiving my judgment in draft Mr Seifert withdrew this submission and accepted there had been no such evidence. It goes without saying the original assertion was a simple mistake and not anything else.

96. Thirdly, Mr Seifert said that it was perverse to suggest that the authorities thought he was in any country other than the UK. The judge did not suggest this. On the contrary, she said at [26] that there was a UK address on the EAW and 'enquiries could have been made' and 'it is difficult to understand why the NCA was not alerted to that sooner'. I reject this criticism.

97. Fourthly, Mr Seifert submitted that the judge failed to take into account the significant changes in his life that had taken place since 2009. He said that she failed to take into account that he had spent time in custody in three jurisdictions, and that his health had deteriorated. I reject these criticisms. The judge expressly took health into account and concluded, rightly, that he suffered from serious conditions which had deteriorated during the relevant time. The time he spent in custody in Germany and Belgium and the Netherlands occurred outside the period with which the judge was concerned and so was irrelevant.

98. Overall, I accept that the cases show that long unexplained delays can weigh heavily in the balance against extradition either in respect of the bars under s 14 or indeed Article 8: *Stryjecki v District Court in Lublin, Poland* [2016] EWHC 3309 (Admin), [70(vi)]. On the other hand, an intensive fact-specific focus is always required. Although the evidence does not explain why the Dutch authorities did not pursue the Appellant more intensively between 2011 and 2016, in circumstances where the Appellant well knew that the Dutch wished him to serve sentence, I am unable to say that the judge was wrong in her assessment. She took into account all of the relevant factors – including, expressly, the Appellant's deterioration in health - and did not err in such a way that would justify me in intervening.

99. I therefore reject this ground of appeal.

Article 8

100. Finally, I turn to the ground of appeal that the district judge was wrong not to hold that extradition would be a disproportionate interference with the Appellant's rights under Article 8 of the ECHR. In my judgment there is no basis for concluding that the judge erred in her analysis such that it would be proper for this Court to undertake the required *Celinski*, supra, balancing exercise for itself and reach the conclusion that extradition would be such a disproportionate interference. I can state my reasons quite shortly.

101. At [31] the judge correctly directed herself on the test to be applied by reference to the principles in *Norris v Government of the United States of America (No 2)* [2010] 2 AC 487 and *H(H) v Deputy Prosecutor of the Italian Republic, Genoa (Official Solicitor intervening)* [2013] 1 AC 338.

102. At [33] and [34] of her judgment the judge set out the factors weighing in favour of extradition and those weighing against extradition and at [35] she reached her conclusion that extradition would not be disproportionate.

103. Mr Seifert criticises the judge's approach, firstly, because he says she failed to 'deal with the evidence that suggested that Mr Versluis would serve a significantly shorter sentence than is suggested in the EAW'. I have already dealt with this submission. There was no such evidence and the judge did not therefore err.

104. Next, Mr Seifert criticises the judge's approach to the five year period between 2011 and 2016 that I referred to in relation to s 14. However the judge expressly dealt with this in detail in [34(3)]. She accepted the Dutch authorities were at fault and that the period was unexplained. But she also said, consistently with what she had already found on the evidence, that the Appellant could not have had a false sense of security because he knew he was wanted to serve his sentence and he knew that the EAW had been issued.

105. Mr Seifert also says the judge did not take into account that the Appellant has been on bail during the two years which the extradition proceedings have taken. That is correct, but it not something which is capable of affecting the overall calculus or the conclusion which the judge reached.

106. Finally, I also reject the suggestion that the judge failed to consider the severity and complexity of the Appellant's medical conditions. That issue lay at the heart of the case and, as I have said, the judge dealt with the evidence very fully in relation to s 25. In relation to the *Celinski*, supra, balancing exercise she dealt with this factor at [34(4)]. She did not therefore leave it out of account but had it firmly in mind.

107. I therefore reject this ground of appeal.

Conclusion

108. This appeal is dismissed.