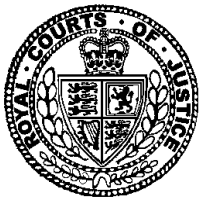

Neutral Citation Number: [2024] EWHC 1332 (Admin)

Case No: AC-2023-LON-001034

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/06/2024

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

MATEI BOTKA	**Appellant**
- and -	
ROMANIAN JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by **Sperrin Law**) for the **Appellant**
Amanda Bostock (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing dates: 29 November 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 14 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is an appeal, by Matei Botka, the Appellant, with the permission of Hill J against the order for the Appellant's extradition to Romania made by District Judge Minhas on 8 March 2023. His extradition is sought to serve a combined sentence for driving offences and drugs offences.

2. The following helpful Chronology is taken from Mr Hepburne Scott's Skeleton Argument.

Date	Event
15.12.93	Appellant's date of birth
31.05.15	Appellant committed extradition offences – driving whilst disqualified and failing to stop after an accident
28.10.16	Appellant tried for driving extradition offences
11.11.16	Appellant convicted and sentenced for driving extradition offences – to 1 year and 8 months suspended for 2 years
29.11.16	Appellant lodged an appeal re driving offences
21.02.17	Appeal dismissed
21.11.17	Above sentence 'became final'
02.05.18	Extradition drugs offences committed – possession of drugs: (i) six MDMA tablets, (ii) 0.6g of MDMA tablet fragments, (iii) 0.2g of cannabis and (iv) fragments of herbal cannabis
July 2018	Appellant moved to the United Kingdom
10.11.18	Period of suspended sentence for driving offences ended
04.05.22	Appellant sentenced to 9 months custody for drugs offences and suspended sentence (of 1 year and 8 months) for driving offences was activated
07.06.22	Above sentence became final
07.09.22	Extradition Arrest Warrant (AW) issued
13.10.22	AW certified as a Part 1 warrant, pursuant to the Extradition Act 2003, by the National Crime Agency (NCA)
02.11.22	Appellant arrested on the AW
21.02.23	Extradition Hearing before District Judge
08.03.23	The judge gave ruling ordering extradition
14.03.23	Appellant lodged Appellant's Notice at the High Court
05.10.23	Permission to appeal granted on the papers by Hill J

3. The single ground of appeal is that the judge was wrong to conclude that extradition would not be a disproportionate interference with the Appellant's rights under Article 8 of the European Convention on Human Rights.

Factual background

4. The district judge summarised the factual background as follows.

5. The AW is a conviction warrant. The domestic warrant for the enforcement of the prison sentence was issued on 4 May 2022, becoming final on 7 June 2022 when it was not appealed.

6. The total sentence of imprisonment to be served is 2 years and 5 months.

7. The AW relates to three offences.

8. Firstly, a suspended sentence was imposed for two offences dated 31 May 2015: driving whilst the right to drive was suspended pursuant to s 335(2) of the Criminal Code; and leaving the scene of an accident without the permission of the police, having caused injury to persons using the pedestrian crossing pursuant to s 338(1) of the Criminal Code. The suspended sentence of one year eight months, suspended for two years, was imposed on 11 November 2016 and became final on 21 January 2017.

9. Second, on 2 May 2018, the Appellant was convicted of possession of drugs for his own consumption contrary to s 41(1) of the Criminal Code for which he was sentenced to nine months imprisonment. The AW makes clear in box D that the Appellant is entitled to a re-trial for these offences having been convicted in his absence.

10. The suspended sentence, was ordered to be served together with the sentence of nine months' imprisonment pursuant to s 96 and s 43(1) of the Criminal Code, hence the total sentence (now) of two years and five months imprisonment.

11. Further Information dated 24 November 2022 stated that the Appellant attended in person and was assisted by a lawyer of his choice at the trial on 28 October 2016 for the driving offences.

12. During his probation period of the suspended sentence he complied with his probation conditions. He was summonsed to appear during the criminal prosecution but it was not possible to find him in Romania.

13. The suspended sentence was activated because the Appellant committed the drugs offence during the probation period of the suspended sentence.

14. The view of the Romanian Judicial Authority is that the Appellant evaded prosecution and trial by leaving the country as he knew the suspended sentenced would be revoked and he would have to serve his sentence in prison and that when he was originally detected for the drugs offences, he committed several actions to evade investigation, ie, did not stop at police signals, hid the car key and fled.

The district judge's judgment

15. In her careful judgment, the district judge found as follows.

16. The issues were Article 8 and s 14 of the Extradition Act 2003 (EA 2003).

17. Contrary to the submission of the Judicial Authority, she found that the Appellant was not a fugitive (judgment, [14(d)]).

18. At [14(e)]:

> "The RP's evidence as to his arrival in the UK, employment history, studies and family circumstances was not challenged. I accept his evidence and find he is a single, adult male studying at the London Metropolitan University for which he is in receipt of both a student loan and universal credit benefits. He is in part-time employment as bar staff. He has established friendships in the UK. His mother passed away in late 2022 and the family home was sold prior to this date. He has a father and brother, the whereabouts of whom were not provided in evidence. The RP has pre-settled status in the UK."

19. In relation to the passage of time, because this is a conviction case, the Appellant can only rely on the period from when he became unlawfully at large, 4 June 2022 (ie when the combined sentence became final). He had not provided sufficient evidence of oppression occurring since that date and it would not be unjust or oppressive to extradite him ([21], [23]).

20. At [23]-[36] the district judge directed herself correctly on the legal principles relating to Article 8.

21. At [37] onwards she carried out the *Celinski* balancing exercise. She found the following factors in favour of extradition:

    a. There is a strong and continuing important public interest in the UK abiding by its international extradition obligations. There is a strong public interest in offenders being brought to justice.

    b. The decisions and processes of the Judicial Authority should be afforded mutual confidence and respect, including respect for each Judicial Authority to implement their own sentencing regime.

    c. The Appellant has a combined sentence of two years and five months imprisonment, all of which is yet to be served. This is not an insubstantial sentence.

22. She found the following factors against extradition:

    a. The Appellant is a single, working man who has been in the UK since July 2018. He

is enrolled at university and in part-time employment as bar staff. He has pre-settled status in the UK.

b. The Appellant is not a fugitive.

c. He has no convictions in the UK.

d. The AW is a conviction warrant in relation to driving offences which date back to 2015 and a drug offence in May 2018. There is no explanation for the delay in commencing proceedings by the Romanian courts.

23. For reasons I will come back to, I note her conclusion that the delay was unexplained.

24. She rendered her Article 8 conclusions at [40(iii)-(vi)] as follows:

> "(iii) I also factor into the balancing exercise that the date of the original driving offences is 31 May 2015, whilst for the drugs offence it is 2 May 2018. The finalised conviction date is in June 2022, some 7 and 4 years after the date of commission of the offences. In respect of the first set of driving offences, the RP was present in Romania for the trial in 2016, appeal process in 2017 and complied with the obligations imposed upon him for the suspended sentence. I have no doubt that he was aware the suspension period of the sentence was 2 years and that the sentence could be activated if he committed a further offence during that two-year period given, he was present at the hearings. Whilst the delay in activating the sentence between May 2018 and July 2022 is unsatisfactory, given the seriousness of the original driving offence, the length of sentence imposed and the acknowledgement of the RP that there was a possibility of consequences when he was stopped in May 2018, I find the delay in activating the suspended sentence is not a weighty factor in the balancing exercise.
>
> (iv) The delay between the date of the drugs offence in May 2018, the issue of the summons in February 2020 and the initial hearing date of 19 February 2022 is also unexplained but, in my view, it is clear the JA were progressing matters in accordance with their procedures. There is no evidence before me to suggest the timeline for the drugs charge proceedings is unusual for Romania. The police served the summons on three occasions at the last known address of the RP, the address of his mother in February 2020. They attempted to provide ample notification of the date of hearing in February 2022. Again, whilst the delay is

unsatisfactory, I do not find it to be particularly weighty factor in the balancing exercise. I note from the sale and buying contract, which is not translated thus I rely on the evidence of the RP as to what the dates and numbers on page 20 of the exhibit bundle mean, that the final instalment for payment in respect of the property was not due until 20 May 2020. I have no evidence before me to explain at which stage the interest in the property and access to the property transferred from the seller to the buyer. There is a clear inference, that the RP may have had notice of the hearing dates given the sale of his mother's property does not appear to have been completed until May 2020. I concede this is a possibility only and I place no weight on it in respect of the balancing exercise.

(v) I accept the RP has a private life in the UK. The RP's evidence was that he left Romania to further his career in the full knowledge that there was the risk of consequences from his stop in May 2018. I find between 2018 and 2023, he developed that private life with the risk of Romanian proceedings looming. The RP's evidence as to the steps he has taken to progress his career are complete a 6-month internship in 2018, subsequently work in different establishments as bar staff and then enrol on a university course linked to his interest in music in 2022. He described himself as an artist and stated he owned his own studio. I have no evidence in relation to this. On the evidence before me, the RP clearly has an interest in music production but has been unable to demonstrate achievements in this field whilst in the UK that would be detrimentally impacted if his extradition is ordered. His employment history is largely bar staff with a short period as a delivery driver. There is no evidence that he cannot return to this employment if he is extradited. There is similarly no evidence before me that he cannot return to his university course. He has been able to obtain the relevant funding and meet the course entry requirements once, and there is no evidence of any barriers to him doing so again. He has friendships in the UK, but there is no evidence that those relationships are unable to continue whilst he is in Romania or resumed upon his return. He has obtained pre-settled status in the UK, there is no evidence before me as to whether that will assist or impede his ability to return to the UK. Whilst extradition is clearly an interference in his article 8 rights, the evidence in relation to the RP's private life in the UK is not such that I can find the consequences of extradition are exceptionally

> serious for him. As a result, I placed less weight on the RP's settled life in the UK in the balancing exercise.
>
> (vi) The factors in favour of extradition are clear; the UK's international obligations, the right of a JA to set its own sentencing regime, the nature of the original driving offences and the length of the sentence imposed, all of which is to be served, and the lack of any evidence that he will be unable to return and resume his life in the UK. I balance these factors for extradition against the combined weight to be attributed to the main factors militating against extradition; the delay in proceedings commencing in Romania, the RP's employment, friendships and university course in the UK, and the lack of any convictions for the RP whilst in the UK recognising that he is not a fugitive. I conclude that the factors militating against extradition are not so weighty that they outweigh the public interest in favour of extradition. There is no evidence before me that the hardship and impact which will result from extradition will go beyond that which is often present when extradition is ordered. I find the consequences of extradition are not so significant that they will have a disproportionate impact on the article 8 rights of the RP."

25. Accordingly, she rejected the Article 8 challenge and ordered the Appellant's extradition.

Statutory framework for appeal

26. This appeal is brought under ss 26 and 27 of the EA 2003. Section 27 provides as follows:

> "Court's powers on appeal under section 26
>
> (1) On an appeal under section 26 the High Court may—
>
> (a) allow the appeal;
>
> (b) dismiss the appeal.
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> (3) The conditions are that—
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) order the person's discharge;

(b) quash the order for his extradition".

27. The question for this Court on appeal is whether the district judge was 'wrong': see *Love v Government of the United States of America* [2018] 1 WLR 2889] [22]-[26].

28. The approach to Article 8 was summarized by Lady Hale in *H(H) v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338, [8]:

"(1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life.

(2) There is no test of exceptionality in either context.

(3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition.

(4) There is 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 United Kingdom should honour its treaty obligations to other countries; and that there should be no "safe

> havens" to which either can flee in the belief that they will not be sent back.
>
> (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved.
>
> (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life.
>
> (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

29. There was no dispute in relation to these principles.

30. Hill J granted permission on the basis that the periods of delay in this case arguably made the district judge's judgment wrong:

> "1. The sole ground of appeal contends that the District Judge was wrong to conclude that the Appellant's extradition would be compatible with his human rights under Article 8 of the ECHR.
>
> 2. Following *Lauri Love v USA* [2018] EWHC 712 (Admin) at [26], the court should only "stand back" and conclude that the relevant question ought to have been decided differently because the overall evaluation was wrong if 'crucial factors should have been weighed so significantly differently as to make the decision wrong'.
>
> 3. However it is reasonably arguable that the various periods of delay constituted such factors, for the reasons advanced at [10]-[19] of the perfected grounds. The same applies to the other matters referred to at [20] of the perfected grounds."

31. The material in the Perfected Grounds which Hill J referred to was mirrored in Mr Hepburne Scott's Skeleton Argument.

Submissions

32. On behalf of the Appellant, Mr Hepburne Scott submitted as follows.

33. He acknowledged the very strong public interest that applies in extradition conviction cases generally. He submitted however that the factors set out below collectively constitute very strong counter-balancing factors that rendered extradition disproportionate in this case:

    a. The delay of 4 ½ - 7 ½ years since the offences were committed. He said this delay substantially lessened the weight to be given to the public interest factor.

    b. The delay between the drug offences and then on 2 May 2018 the sentence for those offences (and the suspended sentence activation) on 4 June 2022. There was no explanation for this four-year delay which occurred whilst the Appellant was bettering and consolidating his life lawfully in the UK and which meant that the suspended sentence activation occurred some 3 ½ years after the operation period of this suspended sentence had ended (on 10 November 2018); this was very oppressive to the Appellant who was found *not* to be a fugitive.

    c. The Appellant's age at the time of the offences (21 and 24 respectively).

    d. The Appellant's lack of any other offending.

    e. The fact that the Appellant complied with the obligations on him during supervision period of the originally suspended sentence.

    f. The nature and seriousness of the drug possession offences involving small amounts of drugs purely for personal use.

    g. The fact that the drugs offences were of a wholly different nature to the driving offences and were committed towards the end of the operational period of the suspended sentence.

    h. The fact that the Appellant has led a blameless and industrious life in the UK since settling here in July 2018.

    i. The fact that the Appellant is apparently doing all he can to better his life and improve his circumstances and has been doing so for many years in the UK (and has pre-settled status).

34. Mr Hepburne Scott relied in particular on the sixth point relating to delay in Lady Hale's summary in *H(H)* that I quoted earlier. He also referred me to other cases, some of which I will discuss below.

35. Therefore, the delay in this case was significant for all of these reasons.

36. In these circumstances it can properly and cogently be argued that the unexplained inaction and substantial delay on the part of the Respondent (and through no part of the Appellant) during the critical period of time, from the time Appellant was stopped and detained for the

drugs offences (in May 2018) to the activation of the earlier sentence (in May 2022), clearly generated a reasonable expectation on the part of the Appellant that his previously suspended sentence may not be activated some 3 ½ years after the end of the operational period of that sentence. These circumstances serve to powerfully increase the oppression to the Appellant caused by this critical, substantial and unexplained delay.

37. Mr Hepburne Scott said the judge had been wrong to attach less weight to delay and the impact thereof as a result of the above and, given her finding that the Appellant was not a fugitive wrong to erroneously 'remind himself' of, *inter alia*, 'the public interest in discouraging persons from seeing the UK as a state which is likely to accept fugitives' (see judgment, [39]).

38. On behalf of the Respondent, Ms Bostock submitted as follows. Overall, she said there was no basis for concluding that the district judge's decision was wrong.

39. It is settled law in relation to Article 8 that the consequences of interference must be 'exceptionally serious' before the importance of extradition may be outweighed by private and family life issues. The general factors to be taken into consideration in Article 8 cases are those outlined by Lady Hale at [8] of *H(H).*

40. Referring to *Celinski*, [14(iii)], she reminded me that in that case the Lord Chief Justice said it would rarely be necessary to refer to any cases other than *Norris v Government of the United States* [2010] 2 AC 487 and *H(H)* (except Supreme Court cases and cases from specifically convened Divisional Courts giving guidance on Article 8). She therefore said the Appellant's citation of other (fact specific) cases was inapposite. She also referred to other passages from *Celinski*, including the point made about the importance of the UK not becoming a haven for fugitives.

41. Ms Bostock said the district judge had correctly referred to these authorities at [25]-[35] of her judgment, which made plain that she applied the relevant law and understood the requirement to conduct a balancing exercise as endorsed by *Celinski*. Whilst he was not found to be a fugitive, the judge did note that he had had an awareness that his suspended sentence might be activated. Whilst Ms Bostock did not seek to go behind the judge's finding about lack of fugitivity (which she said had been 'surprising'), she said that his awareness of the possibility of activation meant that the judge had been right not to give more weight to his lack of fugitivity.

42. In reality, Ms Bostock said that the Appellant's argument is that the passage of time in this case is so great, that his extradition is now disproportionate. That was not correct on the facts. Per *H(H)* she said I had to 'examine carefully the way in which [extradition] will interfere with family life' and that although delay might diminish the weight attached to the public interest in extradition and increase the impact upon private and family life, it would not always do so.

43. She pointed out his lack of family here; his lack of an established career; and his student status.

44. She said whilst there had been some delay between the commission of the activating offence (May 2018) and it being tried (and thus also the suspended sentence being activated) (May 2022), this had to be viewed in the context of the Appellant being untraceable and the pandemic. She said per *Gomes and Goodyer v Republic of Trinidad* [2009 1 WLR 1038, [27], that exploration of whether the state was at fault for delay could be invidious. Lord Brown said that delay where the accused himself is not to blame might be relevant in a borderline case, it did not need to be explored in every case.

45. She said this was not a borderline case. The Appellant was given a chance with a suspended sentence and then committed a further drugs offence. He knew that his sentence might be activated when he chose to leave the country and is not therefore (even if not classified as a fugitive), blameless. The district judge's analysis at [40(vi)], which I quoted earlier, was plainly right.

Discussion

46. As I have said, the question for me in whether the judge was wrong. In *Love*, [25]-[26], the Court said:

> "25. The statutory appeal power in section 104(3) permits an appeal to be allowed only if the district judge ought to have decided a question before him differently and if, had he decided it as he ought to have done, he would have had to discharge the appellant. The words "*ought* to have decided a question differently" (our italics) give a clear indication of the degree of error which has to be shown. The appeal must focus on error: what the judge *ought* to have decided differently, so as to mean that the appeal should be allowed. Extradition appeals are not re-hearings of evidence or mere repeats of submissions as to how factors should be weighed; courts normally have to respect the findings of fact made by the district judge, especially if he has heard oral evidence. The true focus is not on establishing a judicial review type of error, as a key to opening up a decision so that the appellate court can undertake the whole evaluation afresh. This can lead to a misplaced focus on omissions from judgments or on points not expressly dealt with in order to invite the court to start afresh, an approach which risks detracting from the proper appellate function. That is not what *Shaw* or *Belbin* was aiming at. Both cases intended to place firm limits on the scope for re-argument at the appellate hearing, while recognising that the appellate court is not obliged to find a judicial review type error before it can say that the judge's decision was wrong, and the appeal should be allowed.

> 26. The true approach is more simply expressed by requiring the appellate court to decide whether the decision of the district judge was wrong. What was said in *Celinski* and *Re B (A Child)* are apposite, even if decided in the context of article 8. In effect, the test is the same here. The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed."

47. I fully bear in mind what was said in *Celinski* (which Ms Bostock reminded me about, as I have said) about citation of other authorities. But, if I may respectfully say so, there are statements of principle in other cases which I think are of assistance. One is a Supreme Court case, and so on any view it is consistent with *Celinski* for me to look at that at least.

48. Mr Hepburne Scott relied on *Stryjecki v Polish Judicial Authority* [2016] EWHC 3309 (Admin), where Hickinbottom J said at [70(vi)]:

> "(vi) Whilst of course the article 8 proportionality balancing exercise is quintessentially fact specific. However, the cases show that long unexplained delays can weigh heavy in the balance against extradition. In *Jankowski v Regional Court in Bialystok, Poland* [2015] EWHC 2522 (Admin), an unexplained seven year delay between issue and certification of an EAW carried considerable weight with King J in his decision that it would be disproportionate to extradite the appellant. In *Miller v Polish Judicial Authority* [2016] EWHC 2568 (Admin), Collins J described an unexplained six year delay between issuing and certifying a conviction EAW in respect of a two year sentence for drug supply as "disgraceful"; and, although each case is of course fact sensitive, apparently sufficient on its own to conclude that extradition was disproportionate. Where a concerned person is known to be in the UK – as was the Appellant in this case – as Blake J emphasised in *Oreszczynski v Krakow District Court*, Poland [2014] EWHC 4346 (Admin), even where the concerned person is a fugitive, the authorities cannot simply do nothing: they must make some, reasonable enquiries as to the person's whereabouts. In the case before me, there is no evidence that the authorities made any such enquiries. The evidence is, firmly, that they took no steps to find the Appellant."

49. To the same effect, in *Done v Romanian Judicial Authority* [2020] EWHC 3192 (Admin), [62], May J said:

> "The cases show that long unexplained delays may weigh heavily in the balance against extradition even where the appellant is a fugitive.'

50. In *Konecny* v *District Court in Brno-Venkov, Czech Republic* [2019] 1 WLR 1586, Lord Lloyd-Jones (with whom the other members of the Supreme Court agreed) observed at [57] that the passage of time is capable of being a relevant consideration in weighing the article 8 balance in extradition cases and is capable of having an important bearing on the weight to be given to the public interest in extradition. He said:

> "57. It seems to me that until such time as section 14 can be amended by Parliament, article 8 provides an appropriate and effective alternative means of addressing passage of time resulting in injustice or oppression in cases where the defendant has been convicted in absentia. Passage of time is clearly capable of being a relevant consideration in weighing the article 8 balance in extradition cases. (See *H (H) v Deputy Prosecutor of the Italian Republic, Genoa (Official Solicitor intervening)* [2013] 1 AC 338, paras 6 and 8, per Baroness Hale JSC.) It is capable of having an important bearing on the weight to be given to the public interest in extradition. In the article 8 balancing exercise, the relevant period of time will not be subject to the restrictions which appear in section 14. I note that in *Lysiak v District Court Torun, Poland* [2015] EWHC 3098 (Admin), a conviction case, the Divisional Court (Burnett LJ and Hickinbottom J) attached great weight to the nine years the criminal proceedings in Poland took to come to trial and the further 2½ years it took for the conviction to be confirmed in appeal proceedings, when concluding that it would be disproportionate under article 8 to return the defendant to Poland. Furthermore, in cases where it is maintained that passage of time would result in injustice at the retrial to which the defendant is entitled, this consideration could also be brought into account under article 8. The risk of prejudice at a retrial would be highly relevant in the balancing exercise which the extradition court would be required to undertake. Moreover, the threshold test to be satisfied would not be one of injustice or oppression but the lower one of disproportionality. This feature also makes reliance on article 8 a more effective solution than abuse of process where the burden on an appellant would be a much heavier one.

51. In *Lysiak v Polish Judicial Authority* [2015] EWHC 3098 (Admin), referred to by Lord Lloyd-Jones, Burnett LJ (with whom Hickinbottom J agreed) said this at [31]:

> "The important feature is that none of that delay can be laid at the door of the appellant. Furthermore, there is nothing about the circumstances of the proceedings as disclosed in the papers before us which suggests that they were especially complicated."

52. At [32], Burnett LJ held that the judge had misdirected himself as to the relevance of the long delay. This meant that the balance had to be struck afresh. Taking into account the appellant's age at the time of the offending (25), the fact that he had committed no further offences, had been in gainful employment and the 'financially parlous situation' of his wife and the impact on a child who had been at school in England since the age of 5, extradition was disproportionate.

53. Contrary to Ms Bostock's typically able and thorough submissions, I do regard this case as being a borderline case. There are factors for and against extradition of weight. The points made by Mr Hepburne Scott are powerful.

54. Having considered matters carefully and at length, I have reached the conclusion that this is a rare case where, standing back (per *Love*), the district judge was wrong and that she should have concluded that extradition would be a disproportionate interference with the Appellant's Article 8 rights. I have reached that conclusion for the following reasons.

55. Firstly, I do think there was more to be said in relation to the factors against extradition than the judge referred to. I regard the Appellant's comparatively young age when the offences were committed as being important. She did not mention this at all. The delay – which the judge said was 'unexplained' and 'unsatisfactory' – therefore had particular resonance when set against his young age. It represents a very significant portion of the time he had been alive.

56. Second, added to this is that the fact that the activation of his suspended sentence, when it finally occurred, did so long after the suspension period had ended. This seems to me should have weighed heavily in the balance.

57. Next, I do think there is force in the point that the judge was wrong when she reminded himself at [39] of 'the public interest in discouraging persons from seeing the UK as a state which is likely to accept fugitives'. Fugitivity is a binary state: a person is either a fugitive, or they are not. This Appellant was found not to be. In that case, the public interest in the UK not being seen to be a safe haven for fugitives simply did not bite.

58. I also consider the judge seriously underplayed the effect which extradition would have on the Appellant's life here. I do not consider that it was as simple as being that he could be extradited and then just return to the UK and pick up the reins of his life as before, which

I read as having been the tenor of the judge's analysis at her [40(vi)] (she did not think '… he will be unable to return and resume his life in the UK.') It is plain from his evidence (which was not challenged) that he has assiduously sought to build a productive and law abiding life since his arrival here some six years ago through work and education. I am entitled to conclude that much of his efforts to date would be thrown away were he to be extradited. It must be questionable whether his current university, or any university, would accept him back on precisely the same terms as before. Both they, and employers, would want to know where he had been and what he had done in recent years and would, I think it is fair to say, be unimpressed by the response that he had been to prison in Romania including for drugs offences and only recently be released. It is readily foreseeable that he would have real difficulties in resuming his work and education having just been released from over two years in prison.

59. For these reasons, I quash the order for extradition on the basis that the district judge should have answered the Article 8 question differently and had she done so she would have been bound to order the Appellant's discharge, and I so order, pursuant to s 27(5).

60. Finally, I make clear this decision is entirely fact specific and has no precedential value.