



Neutral Citation Number: [2024] EWHC 2708 (Admin)

Case No: AC-2022-LON-002972

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2024

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

IRENEUSZ TEODOR POLOM

Appellant

– and –

REGIONAL COURT IN BYDGOSZCZ (POLAND)

Respondent

Ms Ania Grudzinska (instructed by AM International Solicitors) for the Appellant
Ms Laura Herbert (instructed by Crown Prosecution Service Extradition Unit) for the
Respondent

Hearing date: 3rd October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 25 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Collins Rice:

Introduction

1. Mr Polom appeals, with the permission of the Court, a District Judge's decision to order his extradition to Poland to serve a prison sentence passed on him there. He puts forward evidence of developments postdating that decision.

The decision under appeal

2. Mr Polom's extradition was sought under a conviction warrant, issued by the Polish judicial authority on 4th April 2022 and certified by the National Crime Agency on 25th April 2022. The convictions were for three offences of burglary, two committed in 2005 and one in 2009. A sentence of two years and six months' imprisonment was imposed, all of which remains to be served.
3. Extradition was ordered by District Judge Tempia, after a hearing, on 24th October 2022. Mr Polom had resisted extradition on grounds of abuse of process, and disproportionate impact on his rights, protected by Article 8 ECHR, to private and family life. He had relied in particular on a psychiatric report, prepared by Dr Pamela Walters following an assessment on 2nd September 2022. Dr Walters also gave oral evidence at the hearing.
4. Dr Walters' report addressed Mr Polom's own account of a troubled childhood, an unsettled and itinerant adult life, and a long history of mental health problems (including two suicide attempts) and substance abuse. Within this account were mentions of struggles with his sexuality, and past experiences of the criminal justice system including a reported suicide attempt while detained in a French prison. Dr Walters diagnosed post-traumatic stress disorder and depressive disorder of moderate severity. She identified a substantial risk of suicide in the event of extradition, but not at a level at which the impulse could not be resisted, nor as a risk that could not be appropriately managed.
5. Assessing the medical evidence overall, the District Judge accepted Dr Walters' diagnosis and assessment. She recognised that Mr Polom had a history of mental health and addiction difficulties. The evidence was that he did not at the time have plans to harm himself, but wanted help from mental health services.
6. The District Judge rejected Mr Polom's case on abuse of process. Next, in concluding that extradition would be consistent with Mr Polom's Article 8 rights, the District Judge took into account that Mr Polom:
 - ... has been diagnosed as suffering from post-traumatic stress disorder and a depressive disorder of moderate severity. [He] has attempted suicide in the past and has some suicidal thoughts. Dr Walters has said the continuity of his treatment in the UK is important.

Having directed herself on the law, she explained her final decision as follows:

[129] I have considered the submissions by the parties in relation to the balancing exercise. Having undertaken the balancing exercise, I have weighed in the balance the constant and weighty public interest in extradition and that those convicted of crimes should serve their sentences and the UK should not be seen as a safe haven for those to flee. I have found that there has not been culpable delay in this case, and I have found the RP [Requested Person] to be a fugitive since March 2016. The RP is single and does not have any dependants in the UK.

[130] In my view the main issue, under this balancing exercise, is the RP's mental health and suicide risk. I accept the RP has suffered from mental health issues for a number of years and has been diagnosed by Dr Walters as suffering from post-traumatic stress disorder and depressive disorder of moderate severity. He has a reported attempt to commit suicide on two occasions, in 2020 and 2014, but Dr Walters did not have the details of what happened because the RP would not provide her with details, and she could not be sure the incident in 2014 was a hunger strike. I also accept there is evidence of suicide risk, but I agree with [Counsel for the requesting judicial authority's] submission that the conclusion there is a substantial risk of suicide is a little overstated because in oral evidence Dr Walters accepted the RP has been able to control impulses in the past, has had suicidal thoughts but no firm plans have been put in place and when he has put them in place he has backed out of his own volition. I accept that in the past the RP has benefited from talking therapy and such therapy has been suggested as part of his treatment plan together with a medication. He has had talking therapy before and is on the waiting list. However, neither the RP's mental health nor the risk of suicide is such that it tips the balance against extradition and I find it would not be disproportionate to order the RP's extradition to Poland.

Subsequent litigation history

- (a) *Application for permission to appeal and to obtain new psychiatric evidence*
7. Mr Polom applied for permission to appeal on 27th October 2022, with initial grounds relating to abuse of process (section 2, Extradition Act 2003), to the Article 8 decision, and, pursuant to section 25 of the Act, on the basis that his health issues rendered it unjust or oppressive to extradite him.
 8. Time for perfecting his grounds was extended by the Court, including to enable him to obtain further medical evidence. Perfected grounds were filed on 10th June 2023, together with an addendum psychiatric report from Dr Walters dated 22nd May 2023. Permission to appeal was now sought on two proposed grounds: that the balance of

Art.8 considerations made extradition disproportionate (section 21 of the Extradition Act 2003) and that the condition of Mr Polom's health was such that it would be unjust or oppressive to extradite him (section 25 of the Act).

9. Dr Walters' update report identified a '*significantly deteriorated mental state with a pronounced paranoid delusional belief system*'. She now diagnosed more severe depressive illness associated with psychotic symptoms. She considered Mr Polom unfit to plead and stand trial without treatment for his mental condition. She considered him to '*satisfy the criteria potentially for detention under the mental health act*'. He had '*currently hit crisis point in terms of his mental health*'. He needed access to urgent assistance for his mental health as he posed a significant risk to his own health and the safety of others.
10. Permission to appeal, and permission to rely on this further evidence, was granted on both grounds by Wall J on 13th October 2023. He noted that this evidence indicated a significant worsening of Mr Polom's mental health since the extradition hearing, might be thought capable of belief, and might, if believed, change the outcome of the proceedings.

(b) *Application to obtain further psychiatric evidence*

11. The appeal was listed to be heard on 30th January 2024. On 18th January, Mr Polom applied for vacation of the date in order to get a further report from Dr Walters, in view of the lapse of eight months since her most recent update. This was granted on 30th January by Hill J, who noted that it would still be necessary for a party seeking to rely on the new report to satisfy the court that it should be admitted having regard to sections 27(4) and 29(4) of the Extradition Act and the judgment in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin). The appeal was relisted for 1st May 2024.
12. Dr Walters produced a further psychiatric report on 22nd March 2024. Her opinion now was that, with the benefit of antipsychotic medication which had been prescribed since the previous October, Mr Polom's mental state, while still exhibiting levels of moderate depression and PTSD, '*is overall considerably improved*'. He was now fit to plead and participate in proceedings. While he had had thoughts of self-harm since last assessed, he had not acted on them. He did not report any suicidal plans or intentions; he was assessed as having control over any impulses he might have. Dr Walters was of the opinion that '*any risk to self at present would be more in keeping with his beliefs around how he is likely to be treated by virtue of his sexuality in the event of him being returned to Poland, rather than directly related to mental health issues at present*'.

(c) *Application to obtain neurological evidence*

13. Mr Polom had meanwhile been suffering with headaches, and was sent by his GP for an MRI scan. A report came back on 9th April 2024 indicating that he had at some time in the past had an ischemic attack – an '*old stroke*' – which could account for those symptoms. On Mr Polom's subsequent application, Johnson J vacated the appeal listing on 1st May 2024 to allow him to obtain a neurologist's report.
14. Mr Polom was seen at a hospital stroke clinic on 18th July 2024. A brief report by Dr Amlani dated 5th August 2024 confirmed he had suffered a past stroke producing ongoing neurological symptoms. The prognosis was good: he was making a

progressive recovery and was taking medication to manage the risk of further episodes. He was confirmed as physically ‘fit to fly’ and to be detained. Dr Amlani was not prepared to speculate on the possible causes of the stroke or to associate Mr Polom’s mental health issues with it as a potentially causal factor. But he considered it ‘*likely that his stroke will impact on his mental health and cause further low mood*’.

15. Mr Polom’s medical records indicate that he attended A&E on 12th September 2024 reporting potential neurological symptoms. His test results were baseline normal. He was advised to see his GP; he did so on 16th September and was recorded as ‘*feeling better*’.

The present appeal

16. Mr Polom now pursues a single ground of appeal: that his extradition would, in all the circumstances, be inconsistent with his rights, protected by Art.8 ECHR, to private life. That is with particular (but not exclusive) reference to the state of his physical and mental health: he also argues that the District Judge erred in the assessment of delay in this case.

Legal framework

17. The relevant legal framework is well established and uncontroversial. A judge at first instance approaching a question of Art.8 incompatibility in an extradition case must proceed by identifying relevant factors in favour of extradition, and relevant factors against, and then performing an evaluative overall balancing exercise to reach a proportionality assessment (*Celinski v Poland* [2015] EWHC 1274 (Admin)).
18. On an appeal against an Art.8 compatibility determination, the starting point is that the single question for the appellate court is whether or not the District Judge made the wrong decision (*Celinski* [24]). The Supreme Court put it this way in *Re B* [2013] UKSC 33:

An appellate judge may conclude that the trial judge’s conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupportable. The appeal must be dismissed if the appellate judge’s view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).

19. The *Fenyvesi* test (set out at [32] of the Divisional Court’s judgment) for the admission of fresh evidence into an extradition appeal is in two parts. First, admissibility is restricted to evidence which either did not exist at the time of the extradition hearing or

was not at the disposal of the party wishing to adduce it and which they could not with reasonable diligence have obtained. And second, the court must be satisfied that if the evidence had been adduced, the result would have been different and resulted in the appellant's discharge. It is a '*strict test*', consonant with the parliamentary intention underlying the 2003 Extradition Act, that extradition cases should be dealt with speedily and not generally held up by attempts to introduce equivocal subsequent evidence.

20. Considering the *Fenyvesi* test in the context of applying the correct approach to an Art.8 appeal requires resolving the tension between the starting point of a strictly historical approach to whether the District Judge's decision was 'wrong' at the time, and a dynamic approach to the evaluation of the decision based on taking into account subsequent developments – or at least potentially doing so. Appellate courts in these circumstances inevitably have to enter into some sort of re-evaluation of the first instance *Celinski* balancing exercise to determine whether the extradition order should be set aside as wrong or unsupportable – then or now. The nature and extent of that re-evaluation may be sensitive to the facts and merits of individual cases – see for example *Olga C v Latvia* [2016] EWHC 2211 (Admin) at [26], and *Wyrebek v Poland* [2023] EWHC 951 (Admin) at [36]-[43] – and in particular whether supervening evidence and events do on examination fairly require an entirely fresh *Celinski* balancing exercise to be undertaken at the appeal stage.
21. Mr Polom's formal submission in the present case was that all the new material should be admitted and, taken as a whole, it demanded a fresh and complete reassessment of Art.8 proportionality and a conclusion in his favour. The CPS's submissions were that the new information, taken in context, added nothing material to, and made no difference to, the substance of the original decision, and failed the *Fenyvesi* test; that I should therefore make a historical assessment of the District Judge's decision and conclude it was not wrong; but that in any event even if I were to undertake a completely fresh *Celinski* balancing exercise now, I should come to the same conclusion as the District Judge.
22. At the appeal hearing before me, no objection was made to my consideration of all the medical evidence produced since the extradition hearing, for the purposes of undertaking a fully contextual consideration of whether or not the extradition order should be upheld. The decision of Wall J to grant permission for an appeal in October 2023 had also included a decision to admit Dr Walters' first update report of May 2023. Wall J's decision that *that* report had a potential to change the outcome of these proceedings was the baseline for now considering the admission of Dr Walters' further update and other medical material.
23. There was no material dispute before me that the overriding objective of fairness demanded that the potential impact of the May 2023 report ought properly to be evaluated now in the light of subsequent events and the March 2024 report in particular. I am satisfied the latter is clearly capable of affecting the impact of the former, and hence the outcome of the proceedings: it sets out an account of Mr Polom's mental health significantly recalibrated from the previous report. To that extent, and in the particular context of permission already having been granted for *some* subsequent health evidence to be admitted, I am satisfied that the *Fenyvesi* test is passed and *all* the subsequent health evidence to date should now fairly be admitted.

24. In that sense at least this is a ‘fresh evidence’, and potential ‘change of circumstance,’ case. Julian Knowles J (*Jozsa v Hungary* [2023] EWHC 2404 (*Admin*) at [17]-[18]) summarises that in such a case an appeal can be allowed only if an appellant should, then *or* now, be discharged under Art.8. That does not require an artificial exercise in trying to determine what a District Judge should have (historically) decided if they had had the later material available, but requires an appellate court to reach its own conclusions.
25. Nor, however, does it require the equally artificial exercise of proceeding as if the extradition hearing had never taken place. The extradition hearing was an opportunity to receive and test oral evidence, and an appeal hearing is not. In these circumstances, an appellate court must (a) evaluate for itself the evidence postdating the extradition hearing, (b) consider that evidence together with the evidence before the District Judge, (c) identify the factors for and against extradition in all the circumstances and reach a view on the overall weight to be given those factors, and (d) balance those factors to evaluate the proportionality of Mr Polom’s extradition in the context of his protected Art.8 rights.

Consideration

26. There are no real factual disputes in this appeal. The parties’ dispute essentially relates to the evaluation of the evidence and the consequent weighing of the factors for and against extradition.
- (a) *Evaluating the totality of the evidence*
- (i) Mr Polom’s mental health
27. Dr Walters emphasises in her most recent report that ‘*mental state assessment is a very fluid assessment and an individual’s presentation and indeed risk assessments can vary significantly from day to day*’. In her very first report, she had recorded Mr Polom as himself describing his fluctuating moods and the various factors that can impact on them as amounting something of a ‘rollercoaster’ existence which he has experienced all his life. He characterised his alcohol problems (and what he said then was a brief period of drug use) as an attempt at self-medicating his mental ill-health. The overall evidence, before and since the extradition hearing, is of chronic mental ill-health of varying degrees of intensity over both long and short periods of time.
28. Since the extradition hearing, Dr Walters’ update report in May 2023 described what appears to have been something of a low point or crisis in Mr Polom’s mental health. He was exhibiting florid symptoms, including an episode involving brandishing an axe in his home, which she considered psychotic. Her opinion was that he was at that time unfit to plead and potentially sectionable. It was on the basis of this evidence of ‘*significant deterioration*’ in his mental health that Wall J gave permission to appeal extradition. His reasons for doing so were based on application of the *Fenyvesi* test to that material.
29. Mr Polom’s medical records detail his mental health care and treatment since then. A significant development appears to have been the prescription of, and his response to, anti-psychotic medication in October 2023. Dr Walters’ update in March 2024 summarises significant improvement and stabilisation as a result of that medication.

30. Both before and since that report the evidence is that Mr Polom continues to have better times and worse times. The prospect of extradition to serve a prison sentence itself remains a source of mental stress. He continues under psychiatric care. It was accepted before me that in extradition cases there is a rebuttable presumption that the requesting state will provide all necessary medical treatment to an extradited person whilst he is in custody (*Kowalski v Poland* [2017] EWHC 1044 (Admin) at [20]). No evidence or submissions were put to me in rebuttal of that presumption. But Ms Grudzinska, Mr Polom's Counsel, asked me to bear in mind the importance for his mental health of *continuity* of care, and particularly of that care continuing in a *community* setting.
31. Ms Herbert for the requesting state asks me to consider the extent to which the latest evidence undermines the basis on which permission to appeal was granted in this case. She says, in effect, that the mental health crisis of early 2023 has come and gone, and that Mr Polom's mental ill-health is now if anything better understood and managed than it was at the time of the extradition hearing, including by bringing under control any impulses to self-harm attributable to mental ill-health. She suggests in these circumstances that no greater weight can be given to this factor now than at the time of the extradition hearing.
32. In summary, taking the three mental health reports as a whole and in the context of the medical records, the picture of chronic, but moderate and manageable, mental ill-health that Mr Polom's evidence projected at the extradition hearing in October 2022 had looked, one year later, as if it had subsequently taken a significant downward turn. But a further year on, that trajectory has been substantially adjusted back upwards in the context of the success of therapeutic measures including effective medication. The most recent mental health evidence still confirms that there remains every reason to expect that now, as previously, the experience of extradition and imprisonment would adversely impact his mental health. But against that, there is no clear reason *not* to expect the continuation of the more fine-tuned therapeutic regime which has now been developed to meet his needs, albeit handover remains a potential risk.

(ii) Mr Polom's physical health

33. The discovery that Mr Polom had had a stroke is a new development since the extradition hearing; his physical health had not been a factor in the District Judge's assessment. There is limited evidence about this stroke (it appears that a full neurological expert report had at one time been in contemplation, but was not in the event undertaken). On its own, the stroke appears to be associated with noticeable, but moderate, physical symptoms – not just the headaches but also numbnesses or weaknesses in Mr Polom's body. Dr Amlani's assessment indicates that he is continuing to recover, the prognosis is good, and he is taking medication to manage the risk of future strokes; Dr Amlani suggests no physical reason relating to the stroke to prevent or discourage extradition. The more recent hospital and GP consultations add no such reasons themselves.
34. There is no evidence before me that Mr Polom's mental ill-health was or is itself a risk factor in relation to stroke: Dr Amlani says '*that would be moving into the areas of conjecture*'. Dr Amlani does suggest, conversely, that it is likely that the stroke would impact his mental health and cause further low mood. But he does not elaborate that in any way, and is otherwise firm, in his note, that any mental health assessment would be outside his field and would have to be undertaken by a psychologist or psychiatrist.

Perhaps the most that can be concluded is that the stroke is another factor to be added to the weighing of the factor of Mr Polom's mental health, but it is not possible to infer from the evidence much beyond the incremental.

(iii) Mr Polom's private life

35. Dr Walters' first report had recorded that Mr Polom had been tearful and emotional when she had assessed him on 2nd September 2022, and that this was attributable to both his mental ill health and '*the immense shame he holds as a result of his sexual practices when heavily entrenched in his substance misuse period of his life*'. (That period is hard to pinpoint. On his own account, he experimented with drugs '*throughout my youth*' (he was born in 1968), and his alcohol problem dated back to his childhood. But there are also references in his medical records relating to drug dependence and alcohol abuse as far as 2010).
36. It appears from the evidence that the 'sexual practices' in question involved other men. Mr Polom reported to Dr Walters that he was fearful of being ill-treated in prison in Poland as a result of his sexual orientation (there appears to be no evidence as to the objective probability of that happening). It also appears that, since the extradition hearing, information about Mr Polom's sexuality had become known to his adult son and caused a rift between them. This son was his only child; he had been born to a former partner with whom Mr Polom had had no contact since the son was a year old. The son is now in his mid-30s. It appears that father and son had been living together in the UK, and that the son had been supporting the father. But, since the extradition hearing, the issue of Mr Polom's sexuality had come between them and Mr Polom was now on his own.
37. That is the first of two aspects of his private life which has changed since extradition was ordered and which relates to his sexuality: the District Judge had taken into account as a factor tending against extradition that Mr Polom lived with his son and his son's own Art.8 rights were engaged. It appears that that factor is now of diminished, if any, weight. Conversely, what Ms Grudzinska described to me as Mr Polom's supervening '*extreme loneliness*' is, she suggests, a further factor to be considered in the context of its impact on his mental health.
38. The second aspect is the opinion offered by Dr Walters in her most recent report that '*any risk to self at present would be more in keeping with his beliefs around how he is likely to be treated by virtue of his sexuality in the event of him being returned to Poland... He is very shameful of his bisexual orientation, and this was further aggravated by the way his son [...] having judged him when he found out about his father's sexual preferences.*'. This is, however, in the context of being by way of an opinion which otherwise does not indicate a settled or uncontrolled risk of self-harm caused by mental ill-health; and it does not clearly assess or measure the '*separate risk that relates to extradition per se and his sexuality and sense of shame related to this*'.
39. In these circumstances, again, I can see that Mr Polom's rift with his son and increased isolation can be seen as an enhanced risk factor for his mental health, albeit one which, if incremental, is unspecific.

(iv) The period under curfew conditions

40. Mr Polom was arrested on the warrant on 10th May and produced at Westminster Magistrates' Court the same day. He was released, and has remained, on conditional bail. Among his bail conditions is a curfew between 9pm and 6am which is subject to electronic tag monitoring. No issue arose in relation to these conditions at the extradition hearing or in the District Judge's decision-making.
41. But Mr Polom has now spent 2 years and 4 months on these bail conditions, while pursuing his appeal. Ms Grudzinska proposes that this is a new factor to be considered, not least in the context of its impact on his mental health struggles. She points me to the practice of the High Court in regarding time spent on curfew as a matter which *may* be taken into account as a factor weighing against extradition in the *Celinski* balancing exercise. The Court *may* take notice that in *this* jurisdiction, whatever the practice in that of the requesting state, a daily curfew of 9 hours or more would be treated by a sentencing judge as equivalent to half a day's remand in custody.
42. Ms Grudzinska points me in particular to the recent example of *Brindusa v Romania* [2023] EWHC 3372 (Admin) as an illustration of a case where an appeal court weighed that factor decisively in favour of the appellant. But there is no dispute that this is a highly fact-sensitive matter. In *Brindusa*, the appellant was wanted to serve a short sentence of 11 months. At the time of his extradition hearing, he had been on curfew conditions for 8 months. That was taken into account at first instance, including on the basis of clear information that the appellant would *not* be given any credit by the requesting state for time spent on curfew here. By the time of the (rolled-up) appeal hearing, the time spent on curfew conditions had extended to 26 months – the equivalent of 13 months' remand in the English scheme, which was more than the total period the appellant was wanted to serve. Holgate J placed heavy weight on the fact that no finding of fugitivity had been made against the appellant, and on culpable delay by the requesting state; he regarded the circumstances of the case as '*very special*' and '*exceptional*' and, as such, tipping the balance in the appellant's favour.
43. Ms Herbert points me to the even more recent counter-example of *Bakai v Slovakia* [2024] EWHC 1768 (Admin). In that case, the appellant was wanted to serve a 12 month sentence. He had been on electronically monitored curfew for 9½ months at the time of the extradition hearing and 23 months at the time of the appeal. Fordham J accepted on the facts of the case that curfew was a factor properly to be borne in mind in reassessing the *Celinski* balance of proportionality, but he was not in all the circumstances persuaded that it was such as, exceptionally, to reduce the weight to be given to the public interest considerations in favour of extradition. There was no evidence before him (or at the extradition hearing) as to the position of the requesting state as to whether credit would be given and the '*strong starting point is to respect the requesting state's rules and autonomy in making decisions about them*' ([31], [34]). He also placed significant weight on the finding of fugitivity which had been made against the appellant, and on the 'fragility' of the private and family life he had established in the UK.
44. So this is another intensely fact-specific exercise. The relevant, and uncontroversial, facts of the present case are as follows. Mr Polom is wanted to serve a sentence of 30 months' imprisonment. His period on curfew would be treated as a notional 14 months on remand under the English 'credit' scheme – less than half the period for which he is wanted. The issue of potential credit was not raised before the District Judge, and there was, and is, no evidence as to how it would be treated in Poland. These facts are

distinguishable from those of *Brindusa* and closer to *Bakai*, but each case must be considered individually.

45. Importantly in that context, the District Judge made a finding of fugitivity against Mr Polom as from March 2016, and that he had not put down family roots in the UK; she noted he was a single man with no family dependants here, and the undisputed evidence now is that his relationship with his adult son has broken down since the extradition hearing and they no longer live together.

(v) Delay

46. The issue of delay as such was handled by the District Judge in the present case in a manner which leaves some loose ends which do need to be dealt with on the present appeal on any basis. It is apparent that the formatting of her judgment on Art.8 proportionality went adrift, and the subheadings are awry. But it is clear from their content that [116]-[123] are intended to set out the factors she considered to *favour* extradition, [124]-[128] the factors *against* extradition and [129]-[130] the evaluative balancing exercise.
47. On that basis, the District Judge noted as a factor *favouring* extradition that there had been no culpable delay by the Polish authorities; but then as a factor *against* extradition that there had been ‘*significant and culpable delays in the case with no explanation being given*’. This is plainly inconsistent. The former reference is cross-referred to [90] of the judgment. That paragraph deals with the fugitivity finding. The issue of delay is dealt with substantively at [94]-[95]. That makes clear that the District Judge was taken to the extensive history of the respective contributions of the Polish authorities and Mr Polom himself to the period between the commission of the first offences in 2005 and the current period of fugitivity she found to have begun in 2016. She found that ‘*extensive steps*’ were taken by the authorities to find him between 2005 and 2013; at that point a European Arrest Warrant was issued and Mr Polom was tracked down in France in 2014 and arrested and detained there before being extradited to Poland, from where he fled to the UK in 2016. There is no *evidenced* finding of any culpability on the part of the Polish authorities.
48. In the section of the judgment dealing with the balancing exercise itself, the District Judge records (at [129]) that ‘*I have found that there has not been culpable delay in this case*’. Reading the judgment as a whole, and as fairly as possible, I am satisfied that that was the conclusion she intended to, and did, come to, for the reasons set out in [95]. I am satisfied therefore that the text in [124] was included in error.
49. In any event, the chronology of events between the commission of the first of the relevant offences in the present case in 2005, and the period of fugitivity from 2016, indicates a period of absence from the Polish jurisdiction from 2005 (on Mr Polom’s own evidence), active progress by the authorities at least between 2010 and 2013, and the intervention between then and 2016 of French extradition proceedings and a period of detention in custody in Poland relating to other offences.

(b) The proportionality balancing exercise.

50. The question for this appeal is what difference my evaluation of all the evidence, including the matters postdating the extradition hearing, can and should make to the extradition outcome in Mr Polom's case.

(i) Factors favouring extradition

51. My starting point is to look afresh at the factors *favouring* extradition. It is uncontroversial, and well established in the authorities, that the District Judge was entirely right to identify the '*constant and weighty*' public interest in extraditing individuals to countries with whom the UK is in treaty partnership in order to serve their sentences of imprisonment. The decisions of judicial authorities in those countries must be afforded a proper degree of mutual confidence and respect by courts in this country.
52. Then there is no challenge made to the District Judge's finding of fugitivity. I am satisfied that is indeed what the evidence shows. That is always a weighty factor in favour of extradition. There is a strong public interest in the UK not being seen to be – and, more importantly, not being – a safe haven for convicted offenders deliberately avoiding their sentences.
53. Mr Polom has been sentenced to serve a substantial period of imprisonment. All 2½ years remain to be served. Even if the most favourable possible view were taken of the time he has spent on curfew, there remain 16 months of his sentence to which he has no answer by reference to UK statutory analogy, and that is not a negligible period. And as set out above, the factual matrix of this case, distinguishably from the cases cited to me on Mr Polom's behalf, does not encourage the most favourable possible view of this issue.
54. Mr Polom is not, apart from the index offences, of good character in Poland. His record also includes an offence committed in the UK of driving while many times over the limit for a controlled drug.
55. He is single and without dependants or other family ties to the UK.

(ii) Factors against extradition

56. The question of delay does fall to be considered, even in a fugitivity case, as a potential factor to be weighed in the balance against extradition. The period between the commission of the index offences and the start of the period of fugitivity from 2016 is not insubstantial – 11 years and 7 years respectively. I have explained why I am sure that the District Judge concluded on the evidence before her that there had, however, been no significant and culpable delay by the Polish authorities, and that this state of affairs was largely attributable to the efforts the authorities had to go to in order to counter Mr Polom's evasiveness in relation to the Polish criminal justice system. I have looked again at the relevant chronology and the information before the District Judge. I have to allow for the fact that the District Judge had the advantage over me of having been able to see and hear Mr Polom's testimony in person, and that she found his own account of the history of the matter '*confusing*' and '*not consistent*' and that that was not because his state of distress; she rejected some key parts of it.

57. There is no more evidence now of culpability by the Polish authorities than was before the District Judge. Her finding that there was no material culpability was, on the basis of that evidence, both supported and reasonable, and, in my judgment, the right assessment overall on the facts and evidence available. If this is even a potential factor favouring discharging Mr Polom, it is not a weighty one.
58. The District Judge noted in Mr Polom's favour that his relevant offending was not only some time ago, but '*not of the utmost severity*'. Ms Grudzinska correctly reminded me that the gravity of offending may be a factor to be considered in the balancing exercise independently of the severity of the sentence passed, and notwithstanding the respect due to the criminal processes in Poland and the decision of the sentencing court. The 2005 offences in the present case both concerned breaking into vehicles and stealing radios. The 2009 offence involved acting with another individual to commit a non-residential burglary by entering a workshop and stealing vehicle parts and tools. These offences of intrusion and dishonesty are neither wholly trivial nor indeed 'of the utmost seriousness' in themselves; and their context is evidence of an offending record which is neither unblemished nor prolific. I consider this to be a largely neutral factor in the present exercise.
59. Mr Polom has no family or dependants in the UK other than the adult son from whom he is now estranged. He is said to be an employer here with others dependent on him to that extent for their income.
60. He is in the ongoing process of recovering physically from a past stroke.
61. Otherwise, the principal factors against extradition remain, as they did at the time of the extradition hearing, Mr Polom's mental ill-health and risk of self-harm, as I have evaluated them above on the basis of all the evidence now available. There are some new, or newly-identified, risk factors relevant to those factors. These include, by way of aggravation, the after-effects of a past stroke on his susceptibility to low mood, the illustration provided by a mental health crisis in 2023 of the fluctuations in his mental ill-health, the protracted experience of being on electronically-monitored curfew, the loss of his son's support, and, aside from his mental health, the identification of a risk of self-harm arising from his subjective apprehensions about how information about his sexuality will be received and handled within the Polish criminal justice system.

(iii) The proportionality balancing exercise

62. The public interest in returning fugitives from justice to serve outstanding prison sentences, further to mutual UK treaty obligations, has always been, and remains, a weighty consideration in this case. The procedural factors advanced on Mr Polom's behalf – historic delay by the authorities, the no more than moderate seriousness of his offending, and curfew credit – are not, for the reasons set out above, considerations to which weight of anything approaching the same order of magnitude can be placed on the other side of the balance.
63. Mr Polom is not now said to have a meaningful family life in the UK and no-one's Art.8 rights are advanced for consideration other than his own. Although I can and do take all of the other relevant factors into account in the balance, the real substance of this appeal is whether the impact of extradition on his own wellbeing is such as to tip that balance against extraditing him.

64. I have considered the new medical evidence of Mr Polom's diagnosis, treatment and recovery from an earlier stroke, and the steps in hand to manage future risk of stroke. These do not in my view indicate grounds for weighing considerations of his *physical* wellbeing heavily against extradition as such. His condition appears to be moderate and controlled, and he has a positive prognosis. All the medical evidence I have is that there is no reason in this respect to suggest Mr Polom is other than physically fit to be extradited.
65. So looking at all the circumstances in the round, the dominant factors in the *Celinski* balancing exercise in my judgment remain recognisable as those that were before the District Judge: on the one hand the important and weighty public interest in returning a fugitive to a treaty partner country to serve the sentence its judicial authorities have passed on him, and on the other hand Mr Polom's mental health and risk of self-harm. The first is not said to have, and I am satisfied has not, changed.
66. In relation to the second, my judgment is that the addition of a further two years' mental health data to the longitudinal material available to the District Judge is of broadly neutral overall effect. He suffers from chronic mental ill-health of a generally moderate nature. The medical evidence of increased mental health risk attributable to the 'old stroke' is limited to a brief reference by a doctor who disclaims mental health expertise, and is entirely unparticularised. Otherwise, Mr Polom's lengthening experience of curfew and the rift with his son are adverse life experiences to be set against his enjoyment of an extended period at liberty in the UK, but I have been given an insufficient evidence base to be able to give these factors sufficient aggravating weight to his mental health issues to be capable of tipping the balance in his favour. On the other hand, Mr Polom's mental health has evidently benefited from an improved and stabilising therapeutic and medication regime over the past year, and I have been given no reason to assume that cannot and will not continue on extradition. It is not particularised how discontinuity of provider would itself be a *major* risk factor. Although Dr Walters now identifies Mr Polom's sexuality as a new factor in his risk of self-harm *separate* from his mental health, I have no evidence for objective grounds for him to fear discrimination in Poland, and am only really in a position to weight this factor for him *subjectively* as a stressor. But again, I have not been left well placed to calibrate this for gravity. The District Judge cautioned against overstatement of Mr Polom's risk of self-harm at the time of the hearing, and Dr Walters' latest report does not give significantly more grounds for acute concern.
67. Taking all of the relevant and potentially relevant factors into account, therefore, I am unable to conclude that the District Judge's decision to order Mr Polom's extradition was either wrong at the time or that, with the benefit of a fresh evaluation including subsequent evidence and developments, his extradition now would be disproportionate to the impact on his protected rights.
68. That is not, of course, to conclude that extradition is likely to have *no* adverse impact on his mental health. That is not the legal test. Mr Polom is plainly a troubled and to a degree vulnerable individual with a long mental health history. While I have not been able to conclude that his protected legal rights will be impacted to a *disproportionate* degree, it remains particularly important in extradition cases such as this one that the authorities in the UK and Poland co-operate carefully in the support and treatment of such individuals, so as to continue to ensure their rights are respected. That includes ensuring that full and up to date medical records, and appropriate risk management, accompany each stage of the extradition process from here on.

Decision

69. Mr Polom's appeal against extradition is dismissed.