Neutral Citation Number: [2024] EWHC 460 (Admin)

Case No: AC-2022-LON-003399

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 5th March 2024

Before:
FORDHAM J

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Between:

LESZEK ROBERT GOMULKA	**Appellant**
- and -	
POLAND	**Respondent**

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Toby Cadman (instructed by Taylor Rose Solicitors) for the **Appellant**
Georgia Beatty (instructed by CPS) for the **Respondent**

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Hearing date: 21.2.24
Draft judgment: 26.2.24

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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FORDHAM J

FORDHAM J:

Introduction

1. The Appellant is aged 46 and is wanted for extradition to Poland. That is in conjunction with a conviction Extradition Arrest Warrant issued on 29 December 2016 and certified by the National Crime Agency ("NCA"), 5½ years later, on 8 July 2022. His extradition was ordered by District Judge McGarva ("the Judge") on 24 November 2022 after a hearing at which the Appellant gave oral evidence and was cross-examined. The index offending which is the subject of the December 2016 conviction Extradition Arrest Warrant is as follows. There are four offences of which the Appellant has been convicted in Poland. The first three are offences of using a forged document to obtain a loan: on 27 November 2003; on 9 December 2003; and on 22 December 2003. The fourth is an offence of forging a signature on a loan agreement on a date before 14 February 2002. Those frauds were all perpetrated by the Appellant on the same bank. Their aggregate value is an equivalent of £2,650.

2. At the hearing before the Judge, the Appellant was also wanted for extradition on two accusation Extradition Arrest Warrants: (i) the first, issued on 28 July 2009 and certified by the NCA on 4 February 2015; (ii) the second, issued on 26 January 2015 and certified by the NCA on 2 March 2015. The index offences in those two accusation Extradition Arrest Warrants were, respectively: (i) an offence of alleged handling of stolen property in September 2004; and (ii) an offence of alleged fraud in July 2003. The Respondent accepted before the Judge, and the Judge found, that the Appellant was not a fugitive in relation to those accusation matters. The Judge went on to conclude, pursuant to section 14(1)(a) of the Extradition Act 2003, that the Appellant's extradition on those accusation Extradition Arrest Warrants was "unjust", and also "oppressive", by reason of the passage of time. The Appellant was accordingly discharged on the accusation matters. There is no appeal by the Respondent against that discharge.

3. The Judge made a series of unassailable findings, based on the Further Information from the Respondent and the other evidence which was adduced. The Judge's factual findings – which there is no basis to disturb – included the following. The Appellant was convicted of the four frauds on 23 May 2005 in Poland. He had been arrested on 30 December 2004 and released on 11 January 2005, prior to his trial. He was sentenced on 31 May 2005 to a two-year custodial sentence which was suspended. He committed a further criminal offence during his suspended sentence. Its consequence was that the suspended sentence was activated on 14 November 2006 (meaning he would now need to serve the two-year prison term). There was a hearing relating to that activation on 14 February 2007, at which hearing the Appellant was present, and at which the activation was upheld. The Appellant subsequently made two applications in Poland to postpone his having to serve the two-year sentence. There were hearings in 2007, both of which were attended by the Appellant. Both applications were unsuccessful. It was later in 2007 that the Appellant came to the UK. That timing coincided with him reaching the end of the road in terms of legal routes to avoid serving the sentence. When he left, he was under an ongoing obligation to notify the Polish authorities of any change of address. He was aware of that obligation. But neither at that stage, nor subsequently, did he notify the Polish authorities of his whereabouts or address. He left with the intention of placing himself beyond the reach of the Polish justice system. The Judge was satisfied, to the criminal standard, that the Appellant came to the UK on 30 July 2007 as a fugitive, in relation to the fraud

offences which are the subject of the conviction Extradition Arrest Warrant. Mr Cadman accepts, rightly, that there is no basis to overturn that finding. The Judge also recorded the evidence that the Appellant has moved within the UK every two years or so, taking up employment in different locations. The Judge made clear that he was not finding that these moves were themselves acts of deliberate evasion. The Judge found, on the evidence, that the Appellant was "very much working openly" in the UK.

Section 14, Fugitivity and "the Most Exceptional Circumstances"

4. The Appellant had raised, as a ground of resistance to extradition on the conviction Extradition Arrest Warrant, section 14(1)(b) of the 2003 Act. That provision bars an extradition which would be unjust or oppressive by reason of the passage of time. The parallel argument (under s.14(1)(a)) had succeeded in relation to the accusation Extradition Arrest Warrants. But so far as the conviction Extradition Arrest Warrant was concerned, the Judge found that his conclusion on fugitivity was fatal to the attempted reliance on s.14. He said the Appellant "cannot rely on the delay as there are no exceptional circumstances". Mr Cadman now argues – for the first time in oral submissions – that this was wrong. He says that the extensive passage of time in this case itself constitutes "exceptional circumstances". On that basis, he says, the s.14(1)(b) "oppression" protection remains open. I am unable to accept this submission.

5. In Kakis v Cyprus [1978] 1 WLR 779, Lord Diplock said this of the statutory bar (then in s.8(3) of the Fugitive Offenders Act 1967) that returning the individual would be unjust or oppressive by reason of the passage of time (at 782H-783B, emphasis added):

> ***"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.***

6. It is a very well established rule: see eg. De Zorzi v France [2019] EWHC 2062 (Admin) [2019] 1 WLR 6249 at §46ii. It was endorsed in Gomes v Trinidad and Tobago [2009] UKHL 21 [2009] 1 WLR 1038, as a "rule" to be strictly adhered to" (at §§29-30), which exists for "sound reasons" (at §27). The room for its disapplication is very narrow: we have the phrase "the most exceptional". A possible candidate given by the House of Lords, to illustrate "the most exceptional circumstances", was an accusation case where the requested person "had become unfit to plead notwithstanding his responsibility for the relevant lapse of time" (at §29). Mr Cadman was able to cite no authority or commentary, from the 46 years since Kakis, in support of the submission that a long passage of time could – in and of itself – constitute "the most exceptional circumstances", to allow access to the injustice or oppression test. The essential function of the fugitivity rule in s.14 cases is to exclude access to that test, where the injustice or oppression is being said to be based on "the passage of time". Unfitness to plead – the example given – is an extreme species of why extradition, to face a criminal trial, would be "unjust" or "oppressive". I wonder whether, in practice, the availability of Articles 3 and 8 ECHR are likely to cover any scenario so extreme as to constitute "the most exceptional

circumstances", where there is injustice or oppression despite fugitivity, by reason of the passage of time. Be that as it may, the circumstances of the present case – including the passage of time – fall very far short of being capable of characterisation as "the most exceptional" circumstances. The Judge was plainly right.

Article 8 and Private Life

7. That brings me to Article 8. The question in the present case is this: whether extradition would be a proportionate interference with the Appellant's Article 8 right to respect for private life. Stating the question correctly is important. I have said "private life"; not "family life". I have also said "the Appellant's" Article 8 right. As the Judge recorded, the Appellant does not have family in England. He has no dependants. He does have family in Poland. No innocent family members are impacted. Extradition would not be an "interference" with any identifiable third party's Article 8 rights. But extradition plainly would be an "interference" with the Appellant's private life. As the Judge recorded, as at November 2022 the Appellant had lived openly in the UK for 15 years since July 2007. He has a sustained record of employment here during that period. He has established ties to the UK, in terms of his established life here during that period, with community ties and friendships. The question is whether the interference would be proportionate. The Judge found that it would be. Was that wrong?

Love-26

8. Mr Cadman says it was. He submits as follows. This is a classic case falling within the principle articulated by the Divisional Court in Love v USA [2018] EWHC 172 (Admin) at §26: the "overall evaluation was wrong" because "crucial factors should have been weighed so significantly differently". All the features of the case need to be considered in the round. But there are four crucial features, in particular, which were substantially under- or over-outweighed by the Judge. Individually, and cumulatively, these features show that the overall conclusion was wrong in Love-26 terms. I turn to examine the four crucial factors.

Seriousness of the Offending

9. As to this crucial factor, Mr Cadman says this. The Judge repeatedly referred to the two-year custodial sentence. But he did not, adequately or at all, characterise the "seriousness" of the index offending itself. The weight to be attached to the public interest in extradition varies "according to the nature and seriousness of the crime or crimes involved" (HH v Italy [2012] UKSC 25 at §8(5)). Had the Judge addressed this important question of seriousness, he would have recognised that, although not "trivial", this offending was neither "major" nor "severe". That should have weighed in the balance, substantially to reduce the weight of public interest factors in support of extradition. It was overlooked.

10. I have not been persuaded by this argument. I agree with Ms Beatty's submissions. The Judge was plainly well aware of the "nature and seriousness" of the crimes. These were multiple offences of fraud, over an extended period of time, involving the dishonest use of forged documents to obtain bank loans. Their seriousness is reflected – as the Judge rightly recognised – in the two-year custodial sentence which the Polish judicial system imposed, but which it was prepared to suspend. Given the opportunity to comply with the conditions of his sentence, through the period of its suspension, he reoffended, fairly soon after the suspended sentence took effect in May 2005. The Appellant was aged 24

and 25 at the time of the 2002 and 2003 offending. He had prior convictions in Poland. The Judge set out, earlier in the judgment, the two year sentence and a description of the four offences to which it related. He recorded that "the gravity of the offending" was one of the "factors to be weighed in the balance". When he listed the two year sentence as a factor in favour of extradition, he did not need to repeat or re-describe the nature and seriousness of the offending. He plainly had it in mind and properly included it in the balancing evaluation. No more needed to be said.

Nature of Private Life

11. As to this next crucial factor, Mr Cadman says this. The Judge seriously under-weighed the nature of the Appellant's private life, when counting in the balance against extradition. He gave it little or no weight. He said: "the impact on the requested person's private life is small". He repeatedly emphasised that there is no "family" life. But Article 8 protects both family life and private life. The statutory protection against extradition which violates Article 8 rights is engaged by private life; not just by family life. Extradition can be a disproportionate interference with private life. During the 15 years living openly in the UK, with employment and community ties, the Appellant has established an 'entrenched' private life. There is nothing "small" about this. It should have weighed heavily in the balance. The Judge focused on what this case is not about (family life). He failed to focus on what this case is about (private life).

12. I am unpersuaded by this argument. Again, I accept Ms Beatty's submissions. One of the recognised ways in which the passage of time affects the Article 8 evaluation is that the passage of time tends to increase the impact of extradition upon private life and/or family life. This case illustrates the point. The Judge understood it and recognised it. The Judge specifically included, as a listed factor counting against extradition, that the requested person "since 2007" had worked openly in the UK, had been paying tax and national insurance, and would have made friends here. The point of the reference to "since 2007" is to reflect the nature of the deepening private life ties within the UK during the period of time spent here. The Judge was very well aware that a disproportionate interference with private life is a violation of Article 8. He explained why he did not find a violation. In doing so, he did not under-weigh the private life; rather, he identified it and considered it. There was no error in the Judge's description of "the impact" on the Appellant's "private life" as being "small". The Judge was comparing this "impact" with others encountered in Article 8 extradition cases – which are far weightier and more serious – because innocent family members are impacted. That was what the Judge plainly meant when he said that this "impact" was "small", observing in the same breath that "no innocent family members are impacted". In the same way, the Judge went on to say that the "impact" on the Appellant "cannot be said to be exceptionally severe". The Judge did not overlook, or materially under-weigh, the nature of the private life that had built up and was being interfered with.

Passage of Time and "Culpable Delay": The Argument

13. The next crucial feature concerns the passage of time and "culpable delay". Here is Mr Cadman's argument, as I saw it.

14. Looking overall, there is a 21-22 year period from the 2002/03 offending to the present. More specifically, there are two substantial periods. First, there is the 9½ year period between July 2007 (when the Appellant left Poland and came to the UK) and December

2016 (when the conviction Extradition Arrest Warrant was finally issued). Secondly, there is the 5½ year further period up to the Appellant's arrest in June 2022. These are themselves two consecutive periods of very substantial delay, with an aggregate of 15 years. They are periods of "unexplained" delay. The Judge himself found that there was "no real explanation" for the delay between 2015 and 2022. The context is that the Appellant was understood by the Polish authorities to be in the UK, as at 2015. And so he was. He was working openly here. He was paying taxes here.

15. The Judge did not go nearly far enough. The delay is not only "unexplained". It is also "culpable". This was not recognised by the Judge. He did not focus on the question of "culpable" delay. He failed to find that there was "culpable" delay. Instead, he focused on the question of fugitivity. He repeatedly referred to that feature in characterising the public interest considerations in favour of extradition as remaining "strong". In the Article 8 'balance sheet' in favour of extradition the Judge included this factor: "although there has been delay and the offen[ding] is relatively old some of that delay at least should be attributed to his fugitivity". The Judge should have found "culpable" delay and should have found this significantly affected the balance.

16. Two sources support this analysis. The first is the witness statement from the National Crime Agency provided in July 2022, which the Judge considered. This statement was obtained by the CPS precisely because of the importance of having details as to the sequence of events from 2015 and 2022. Based on the computer records, the witness statement of NCA G5 Business Support Officer Gemma O'Neill told the Judge this:

> ***The Interpol Case was created on the 23/01/2015. The EAWs were requested from INTERPOL Warsaw on the 28/01/2015. EAW III KOP 121/09 was received on 30/01/2015 and certified on 04/02/2015. EAW VIII Kop 10/15 was received on 25/02/2015 and certified on 02/03/2015. The subject profile and EAWs were sent to the Metropolitan Police on 02/03/2015. The profile was returned to the NCA on 31/03/2015, as the subject was not located. New information as to the location of GOMULKA was received from INTERPOL Warsaw on 02/06/2022. Subsequently, on 13/06/2022 the profile and EAWs were returned to the Metropolitan Police. On 29/06/2022 the subject was arrested.***

17. The Judge was right to say that this was "no real explanation of the delay between 2015 and 2022". But he should have gone further and characterised it as "culpable delay". The accusation Extradition Arrest Warrants of July 2009 and January 2015 were received and certified by the NCA in early 2015. The January 2015 accusation Extradition Arrest Warrant had specifically referred to the Appellant being understood by the Polish authorities to be in the UK. That explains why the accusation Warrants were being certified. All of this means that when the conviction Extradition Arrest Warrant of 29 December 2016 was issued there is no good reason why it was not certified by the NCA promptly. There is no explanation of any step after March 2015, right up until June 2022. That was 7 years of inaction. The Appellant was living and working openly, as the Judge found. He should have been located by the authorities. This "culpable" delay by the UK authorities properly weighs heavily against extradition.

18. The second source which supports a "culpable" delay analysis is the authorities. Three authorities explain and illustrate the importance of taking a robust approach. They illustrate why, in the present case, the Judge should have found that there was unexplained, and "culpable" delay, which should have counted strongly in the balance against extradition:

i) First, in Oreszczynsi v Poland [2014] EWHC 4346 (Admin), Blake J found "culpable delay" between the receipt by the NCA on 15 November 2010 of a "duly signed and certified" conviction Extradition Arrest Warrant and arrest 3½ years later in June 2014, where there was a failure to make "any enquiries", not even a check with the Home Office (with whom the fugitive requested person had registered in September 2009), at a time when the NCA was supposed to be "assisting in … execution" of the Extradition Arrest Warrant: see §§1, 5, 9, 11.

ii) Secondly, in Geleziunas v Lithuania [2016] EWHC 16 (Admin), Sweeney J found "culpable delay" of around three years (see §35): first, when the Lithuanian authorities failed to issue a domestic warrant (May 2010 to January 2012); and second, when basic checks were not conducted (May 2012 to February 2014). In the light of this "substantial culpable delay", extradition of the non-fugitive appellant was both s.14 oppressive and Article 8 disproportionate (§38).

iii) Thirdly, in Cieczka v Poland [2016] EWHC 3399 (Admin), Mitting J found 6 years of "unexplained and therefore not excused delay" between the issuing of conviction Extradition Arrest Warrants in 2009/2010 and their certification by the NCA in March 2015, which "cried out for an explanation", where the requested person had been living openly in the UK (see §9).

Some Key Points about Article 8 and the Passage of Time

19. That, then, is Mr Cadman's argument on culpable delay. Before turning to address it, I will identify the key points which I have derived from the authorities that were cited to me in this case. Here they are:

(1) Frame of Reference. Delay and the passage of time may (a) diminish the weight to be attached to the public interest in extradition and/or (b) increase the impact of extradition upon private and/or family life. This is a principled, focused way of looking at delay and the passage of time in Article 8 cases. To treat questions of delay, or "unexplained" delay, or "culpable" delay, as 'freestanding' features may risk losing the value of that helpful and principled frame of reference.

(2) Circumstances. In asking the focused questions from the principled frame of reference – whether and to what extent delay and the passage of time does (a) diminish the weight to be attached to the public interest in extradition and/or (b) increase the impact of extradition upon private and/or family life – the extradition court can consider all relevant circumstances. These circumstances may relate to the requested person, to third parties, to the requesting state authorities and to their agents in the UK. It may involve what has been done. It may involve what was known.

(3) Fugitivity. Fugitivity is not an exclusionary feature for Article 8, as it effectively is for s.14. But fugitivity is nevertheless a powerful feature when considering the passage of time in the Article 8 evaluation. It can illuminate and inform both (a) the question of any diminution in the weight to be attached to the public interest and (b) the question of the impacts of extradition upon private and family life.

(4) Interrogation. Although all the circumstances can be considered, there are limits to the appropriateness of interrogating the steps taken, or not taken, by the requesting

state authorities and their UK agents. There are limits to how persuasive it is for the requested person to point, in the context of all of that, to living "openly". In a fugitivity case, it can be especially inappropriate to interrogate the steps taken or not taken by the authorities; and it can be especially unpersuasive for the fugitive requested person to point to living "openly".

(5) Public Interest Weight and Fugitivity. Because fugitivity is not an exclusionary feature, even where the requested person is a fugitive it may be possible – looking at circumstances relating to the delay and the passage of time – to identify a diminution in the weight attached to the public interest. An illustration is in saying, even in the case of a fugitive, that the picture relating to delay "does not suggest any urgency about bringing the appellant to justice, which is also some indication of the importance attached to her offending".

(6) Impact of Extradition. The weight to be attributed to the impact of extradition upon private and family life – for all affected individuals whose Article 8 rights would be interfered with – will always necessarily be informed by the passage of time, having regard to all the circumstances (including whether the requested person is a fugitive). The Court will consider the actions and changes in circumstances of all those affected by extradition, and the correlation between events to deepen private and family life ties and periods of inaction by relevant authorities.

(7) Fact-Specificity. Cases can be helpfully illustrative, but it must always be remembered that they are intensely fact-specific.

20. I will explain how I have derived all of this from those cases which were cited to me by Counsel.

(1) Point (1) is derived from HH v Italy [2012] UKSC 25 at §8(6). It is the frame of reference identified in T v Poland [2017] EWHC 1978 (Admin) at §59. It is reflected in the discussion of HH §8(6) – and of the immigration analogue EB (Kosovo) [2008] UKHL 41 §§14-16 – by Blake J in Oreszczynski at §10. It was cited in Geleziunas at §22. The discipline of a principled frame of reference is reflected in the observation recorded in Ossowski v Poland [2023] EWHC 3249 (Admin) at §34, that Article 8 is not a "freestanding mechanism" with the effect of "diluting or circumventing s.14".

(2) Point (2) is the application of Point (1) in the fact-specific cases (see Point (7)). So, it is illustrated by Oreszczynski, where (at §12) Blake J concluded that the periods of delay, including the four years he characterised as "culpable", did have an effect which "both diminishes the weight to be attached to the public interest in returning this appellant to serve his sentence and increases the weight to be afforded to the respect to the family and private life established in this country". In T v Poland, by contrast, 6½ years (§60) was found not appreciably to diminish the public interest in extradition (§63).

(3) Point (3) is illustrated by Tarka v Poland [2017] EWHC 3755 (Admin), where Haddon-Cave J emphasised, including in relation to Article 8, the importance of the fugitivity rationale seen in s.14 cases: (a) that the "key principle" is that "it does not lie in the mouth of a fugitive to argue that the requesting state is to blame for delay, that somehow unexplained delay should weigh so heavily in the balance that

extradition is disproportionate" (§14); and (b) that this "is equally applicable in the context of Article 8" (§15). He also thought that Oreszczynski may have trespassed against this principle (§18). Point (3) is illustrated by cases like T v Poland, where periods of 6½ years (§60) did not appreciably diminish the public interest in extradition, in what was described as "a conviction case for a serious offence involving a fugitive" (§63).

(4) Point (4) is a theme seen in the more recent cases in particular. I see it as linked to the observation that the later authorities take "a somewhat stricter approach" than the cases on which Mr Cadman has relied: see Cis at §21. In Ossowski the point is recorded that the Extradition Act 2003 "does not require delay routinely to be explained" (§23). In T v Poland the Divisional Court made several practical observations: (a) that an Extradition Arrest Warrant may not be issued until the requesting judicial authority "believes" that the requested person has both left and is in another EU country; (b) that the UK authorities may not certify until there is "clear information" of a UK "location"; (c) that expecting different action could result in "the waste of resources"; (d) that the requested person "living … openly" is frequently relied on by requested persons; but (in a passage frequently relied on by requesting judicial authorities) (e) that foreign and UK authorities are not to be expected to "explore the byways and alleyways of British officialdom" (see §§61-62). T v Poland was a fugitivity case. As to non-fugitivity cases, the thinking in the s.14 context was always that: "what matters is not so much the cause of such delay as its effect"; so that "the court is not normally concerned with what could be an invidious task of considering whether mere inaction of the requisitioning government or its prosecuting authorities which resulted in delay was blameworthy or otherwise" (see Kakis at 783C-D; Gomes §§19, 27). An Article 8 recognition of this same thinking was treated as apt in Tarka (see §10).

(5) Point (5) involves an illustration derived directly from HH at §46, read with §8(6). Fugitivity cases where the passage of time has featured include Oreszczynski and Cieczka. As I have explained, Oreszczynski is a case where (at §12) the four years characterised as "culpable" were held to have an effect which "diminishes the weight to be attached to the public interest" in extradition.

(6) Point (6) is illustrated by Tarka, where Haddon-Cave J distinguished between culpability for delay on the one hand, and the overall impact of delay with its private and family life implications on the other (see §19). This fits with the Kakis s.14 idea, to which I have referred, that "what matters is not so much the cause of such delay as its effect". Impacts are seen in Oreszczynski with the significance of the period for family life (§12); as was the position in Geleziunas (§35); and Cieczka (§7).

(7) Point (7) is a familiar truth in extradition cases, and throughout public law. It was emphasised in Cis (at §15), where Choudhury J recorded that "other authorities in this area are of limited value where decisions are fact sensitive". The point is illustrated by all of the cases, including the three cases relied on by Mr Cadman. Oreszczynski (see Cis at §§15iii, 20) turned on the Court having identified a key feature requiring further information (§3), the response to which was that there had been a failure to make "any inquiries" at all (§9), for 3½ years after receiving a duly certified Extradition Arrest Warrant, a period which the Court characterised as having a high degree of significance for family life (§12). Geleziunas was a non-

fugitivity case, involving three years of inaction characterised as "culpable", during a period with a high degree of significance for family life (§35) described as "entrenchment" of family life involving a partner and six blameless children (§38; and Cis at §15i)). Cieczka (see Cis at §§15iii, 20) was a fugitivity case involving offences as a 17 and 18 year old, with 6 years (aged 22 to 28) of unexplained delay (§9), at a time involving the birth of a young son (§7), which the Judge saw as very finely balanced (§11).

Passage of Time: Discussion

21. I return to the passage of time in the present case. It is right that a substantial passage of time passed from July 2007 to December 2016, a period of 9½ years. It is right that a further substantial passage of time passed from December 2016 to June 2022, a further period of 5½ years. These need to be considered using the principled frame of reference. So far as concerns delay and the passage of time 'serving to increase the impact upon private life', this was fully considered and properly weighed by the Judge in considering the nature of the private life, which I have already addressed (§§11-12 above). These are the effects of the passage of time. What about the delay and the passage of time serving to diminish the weight to be attached to the public interest in extradition? The Judge did not say that the passage of time served substantially to diminish the weight to be attached to the public interest in extradition. But I cannot accept that this was wrong.

22. The period up to the end of 2007 is accounted for by the Appellant's own actions in seeking to resist activation and postpone having to serve his sentence. From that point, he was squarely a fugitive. It is true that the Appellant was found by the Judge to have lived "openly" in the UK, and not "deliberately evading" the Polish authorities by moving around every two years. But the fact is that he had chosen to come to the UK with the intention of placing himself beyond the reach of the Polish judicial system. And the fact is that he did move around the UK, every couple of years. He also did so while under a specific and known obligation to notify the Polish authorities of his change of whereabouts including an address, knowingly failing to comply with that obligation. The Appellant's actions strongly undermine his ability, with any justification, to lay the passage of time at the door of the requesting state authorities. It was not necessary to interrogate further the steps taken or not taken by the authorities; nor persuasive for this fugitive requested person to point to living "openly"; and it cannot be said that this passage of time suggests a relevant lack of urgency about bringing the Appellant to justice, or indicating a reduced importance attached to his offending. The Judge was entitled not to treat this as "culpable" delay. He was entitled not to treat it as substantially diminishing the weight to be attached to the public interest in extradition.

23. Particular focus has been given to the period after 2015. It is true that there is evidence that in 2015 that the Polish authorities had reason to believe that the Appellant was in the United Kingdom. This was reflected in the issuing of the second accusation Extradition Arrest Warrant on 26 January 2015, and in its wording (which records that belief). There had been the Interpol case received in January 2015 and the warrants were sent to the Metropolitan police for execution in March 2015. No concrete criticism has been advanced as to why liaison with the Metropolitan police was inappropriate. It was subsequent contact with the Metropolitan police which tracked the Appellant down in 2022. In 2015, the Metropolitan police were unable to locate the Appellant. That is not the absence of a search. It is evidence of a fruitless search. It was when new information came from Interpol in Warsaw in June 2022 – which cannot be contested on the evidence

– that steps were taken which resulted in the Appellant's arrest. The certification of the conviction Extradition Arrest Warrant followed on 8 July 2022 and the Appellant was arrested on the warrant on 26 July 2022. True, this is a period of time during which there is no explanation of other steps being taken – between the failure in 2015 and the new information in 2022 – and the Judge said there was "no real explanation" as to that period. But, again, the Judge was entitled not to treat this as "culpable" delay. He was entitled not to treat it as substantially diminishing the weight to be attached to the public interest in extradition. Again, this was not evidence of an absence of urgency in bringing this fugitive appellant to justice; nor an indication a lack of importance attached to his offending. The Judge was entitled not to interrogate the actions of the authorities any further. In my judgment, the Judge's approach to delay and the passage of time was entirely in step with the key points to be derived from the authorities. I accept the submissions of Ms Beatty. I can see no error by the Judge.

Post-Brexit Return

24. The final crucial feature is the post-Brexit position regarding the Appellant's ability to return to the UK. In listing the factors counting against extradition, the Judge said this (emphasis added):

> ***There will be some uncertainty about his ability to return to the United Kingdom following his release from his sentence. He has applied for settled status and is awaiting the outcome of his application. In truth any uncertainty about his ability to return is due to him having been convicted of an offence that resulted in a one year 11-month prison sentence not because he will be extradited.***

25. Mr Cadman says that the problem of the ability to return to the UK ought to have been afforded far greater weight, and that the observation in the final sentence, about uncertainty being "due to" the conviction was wrongly treated by the Judge as a complete answer.

26. Two authorities were cited to me: Pink v Poland [2021] EWHC 1238 (Admin) and Gurskis v Latvia [2022] EWHC 1305 (Admin). In Pink (at §34) the requested person had relied on difficulties he might face in coming back to the UK after serving his sentence in Poland. Chamberlain J said this (at §52, emphasis added):

> ***I accept on the basis of the appellant's latest evidence that there is a prospect that, if extradited, the appellant may not be readmitted to the UK after completing his sentence; and that this would put his current partner (who has settled status) in the difficult position of having to leave if she wishes to continue the relationship. But I do not think that this can properly be regarded as a consequence of extradition. It is, rather, a consequence of (i) the appellant's criminal convictions in Poland and (ii) the change to the immigration rules as a result of Brexit. Mr Hawkes said that the appellant could expect to acquire settled status if discharged from the existing warrant by this court. He was not, however, able to point to any policy document indicating that the Home Office's attitude to applications by persons with criminal convictions in EU Member States would be affected by whether the applicant had been extradited in respect of those offences. In the absence of any such document, I do not think it would be safe to make the assumption that extradition would make a difference to a person such as the appellant, who has been in the UK for a continuous period of more than 5 years since his release from prison in Poland in 2015.***

The Judge was clearly picking up on the observation underlined.

27. In a sense, many of the familiar Article 8 impacts of extradition in any conviction case can be said to be a "consequence" of the requested person's "criminal convictions" in the

requesting state. If I am extradited to serve a sentence of imprisonment in the requesting state, in circumstances where my UK-based children cannot see or talk to me, that is both an impact of extradition and a consequence of my criminal conviction. The passage in Pink (which I have quoted) was dealing specifically with difficulties in obtaining entry clearance, from an EU State, post-Brexit. It needs, moreover, to be read as a whole. Chamberlain J was addressing the durability of the requested person's right to stay in the UK, given the criminal convictions abroad, with or without extradition. In other words, he was asking whether – leaving aside any extradition – the requested person could expect to have a durable UK presence under applicable immigration rules and policies. This, importantly, explains what became Swift J's crucial 'counterfactual', clearly identified in Gurskis (at §§30 and 33). The necessary 'counterfactual' involved asking this question: even if there were no extradition, what effect would the conviction abroad have on the requested person's immigration status in the UK?

28. In some cases, it may be relevant in Article 8 terms that any rupture of family life or private life will be short-term, because there is no reason why the requested person could not return and resume their life in the UK. In other cases, it may equally be relevant that the rupture will be long-term, because that course can be shown to be barred.

29. A key insight is that there is no longer Brexit "uncertainty". There is, rather, a settled position with rules and policies (Gurskis §33). The prospect of re-entry, and the counterfactual if never extradited, can thus be fully considered. This has a substantive impact. It also has a procedural impact: it is incumbent on the requested person and their representatives to make a fully-formulated, fully supported concrete submission (see Gurskis §22). Such a submission is wholly absent in the present case, as Mr Cadman accepts. Its absence is fatal. The uncertainty, to which the Judge referred, needed clearing up by a concrete and supported contention. It was open to Mr Cadman to seek to provide it to this Court. But that has not happened either.

30. But I add this. To the extent that the Appellant's UK-return is indeed precarious, that – as Ms Beatty points out – will commonly be the position in the context of Part 2 extradition, as it can now be in Part 1 (EU) cases. In the present case, the Appellant has his private life ties to the UK, all built on the sand of his fugitivity. I cannot see how the entry clearance difficulties, in light of the other features of the case, could render extradition a disproportionate interference with private life.

Standing Back

31. In the present case, the interference is with – what is now – nearly 17 years of established life in the United Kingdom. The Appellant has been here since the age of 30. He is now 46. Although his time here has involved moving every two years or so, it has involved stable employment, living openly, putting down roots, establishing ties to the UK and people here, through that settled period of private life here. The Appellant has committed no offences here. He has been contributing as a tax paying member of society. It is right to recognise that his extradition to return to Poland will be a significant and substantial rupture of that established private life. But it is also right to recognise what this case is not. It is not a case of extradition which would rupture a family life. It is not a case where extradition would interfere with the private life or family life of any third party, still less an innocent dependent partner or child. Those burdens weigh heavily where they are present. Here, they are absent. I cannot see that any feature in support of extradition was materially over-weighed, nor that any feature counting against extradition was materially

under-weighed. This was a case where it was significant that the Appellant was a fugitive. It was a case where it was significant that there was no family life involving any dependent partner or child. There was no inconsistency in finding oppression by reason of the passage of time in relation to each accusation matter – extradition to stand trial – but no disproportionate interference with Article 8 right to respect for private life in respect of the conviction matters, as to which the Appellant was a fugitive.

32. The authorities explain the role of the High Court on appeal on the question of Article 8 proportionality, as one which allows a degree of latitude for the front-line judge conducting the evaluative proportionality exercise. Applying that familiar approach, I can see no basis for saying that the Judge's conclusion was wrong. But I will add this. If I were simply applying a substitutionary approach to the evaluative question of proportionality, standing on the platform of the Judge's unassailable findings of fact, I would have upheld the Judge's Article 8 proportionality assessment as being correct.

Conclusion

33. In those circumstances and for those reasons the appeal is dismissed.