Neutral Citation Number: [2025] EWHC 163 (Admin)

Case No: AC-2024-LON-001061

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/01/2025

Before :
Mr Justice Dexter Dias

- -

Between :

Lucasz Galadzun	**Appellant**
- and –	
Polish Judicial Authority (Regional Court in Gdansk)	**Respondent**

- -
- -

Ben Joyes (instructed by **Hodge Jones & Allen**) for the **Appellant**
Lucia Brieskova (instructed by **Extradition Unit, Crown Prosecution Service**) for the **Respondent**

Hearing date: 15 January 2025

- -

JUDGMENT

(circulated to the parties in draft: 22 January 2025)

If this Approved Judgment

This judgment was handed down remotely at 10.30am on 31st January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Dexter Dias :

1. This is the judgment of the court.

2. To assist the parties and the public follow the court's line of reasoning, the text is divided into eight sections, as set out in the table below.

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§I.

INTRODUCTION

3. This is an appeal in an extradition case. The appellant is a Polish national wanted by the Regional Court in Gdansk as a fugitive from Polish justice, having for nearly 20 years evaded substantial prison sentences for both domestic and commercial burglaries by remaining in the United Kingdom.

4. Lukasz Galadzun ("**the appellant**") brings this appeal against the decision ("**the Decision**") of District Judge Curtis ("**the Judge**") made on 21 March 2024, sitting at the Westminster Magistrates' Court as the appropriate judge for the purposes of the Extradition Act 2003 ("**the Act**"). The Judge ordered the appellant's extradition to Poland pursuant to section 21 of the Act. The appellant has more than two years' imprisonment still to serve in Poland. He does not consent to his extradition.

5. The Polish judicial authorities seek the appellant on an arrest warrant issued on 27 January 2023 and certified by the United Kingdom's National Crime Agency on 14 April 2023. It is a conviction warrant issued after the United Kingdom left the European Union. Therefore, the process is governed by the Title VII of the EU-UK Trade and Cooperation Agreement. These are "Part 1" proceedings since Poland is designated a Category 1 territory under the Extradition Act 2003 (Designation of Part 1 Territories) Order 2003 (SI 3333 of 2003), as amended.

6. Permission to appeal was refused on the papers by Bourne J on 14 May 2024. However, following a renewed oral application on 8 August 2024, Garnham J granted permission on a sole ground, that being disproportionate interference with the appellant's right to respect for private and family life under Article 8 of the European Convention on Human Rights ("ECHR"), engaging the statutory prohibition against extradition under section 21 of the Act.

7. In this appeal, the appellant is represented by Mr Joyes of counsel. The respondent is the Polish Judicial Authority (Regional Court in Gdansk), represented by Dr Brieskova

of counsel. The court is grateful to both counsel for their focused and helpful submissions.

§II. ARREST WARRANT

8. To contextualise the arrest warrant, some facts about the appellant's history assist. He is now 41 years old and detained in HMP Wandsworth presently. He arrived in the United Kingdom in 2006 and has remained here for approaching 20 years. He came, as the Judge found as a fact, as a fugitive from Polish justice. The appellant has criminal convictions in Poland. These were committed when he was much younger, between the ages of 17 and 21. They resulted ultimately in the imposition of prison sentences. The Polish system does not necessarily incarcerate a person sentenced to imprisonment immediately, but sometimes arranges a future date to surrender. That happened in this case. Instead of surrendering, the appellant left Poland to avoid going to prison, as he accepted before the Judge. He arrived at Luton Airport on 28 May 2006, a month after the Polish court revoked his release on parole and ordered his surrender to prison. He has made the United Kingdom his home.

9. He was arrested on 16 June 2023 while serving a 6-month sentence of imprisonment for an offence of burglary in this country. He has remained in custody here since, and his arrest led to a series of administrative and legal steps by the Polish judicial authority to secure his return to Poland to serve the balance of the imposed sentences. At the point of this hearing approximately 2 years' imprisonment in Poland remain outstanding.

10. In Box E of the arrest warrant, the offences are set out:

> **Conduct I) – A/ case ref. II K 596/01 ("Offence A")**
>
> On 27 May 2001, in Prabuty, acting jointly and in concert with other persons, having first ripped a metal sheet and wooden planks off a shop wall, he took 10 beverages of various kinds and 10 packs of chips representing the total value of PLN 70 (approx. £13.60) from inside the shop, thus acting to the detriment of Wiesław Sztylak.
>
> **Conduct II) – B/ case ref. VIK 473/03 ("Offence B")**
>
> On the night of 19-20 October 2003, in Prabuty, in Ogrodowa Street, he ripped off the padlock securing the entry door to a basement and broke into it, from where he took electronic devices, namely a Kawasaki strimmer and a Black-Decker drill representing the total value of PLN 1,750 (approx. £340), intending to appropriate the items dishonestly, thus acting to the detriment of Dariusz Wierzchowski.
>
> **Conduct III) – C/ case ref. II K 379/05 ("Offence C")**
>
> On 15 June 2005, in Prabuty, acting jointly and in concert with other persons, he and the others broke a window pane and broke into the rooms of the 'BIL' grocery store, from where they took 100 packs of cigarettes of different brands, 6

disposable cigarette lighters, electronic scales, and a fiscal cash register tray, intending to dishonestly appropriate the items which represented the total value of PLN 2,128 (approx. £414), thus acting to the detriment of Leszek Szczegielniak, where the Appellant committed the above before the lapse of five years from having served no less than 6 months of the penalty of prison imposed on him for a similar intentional offence in the judgement of the District Court in Kwidzyn of 26 October 2001, case ref. II K 596/01 (Conduct I).

11. The relevant provisions of the Polish law are:

Conduct I – contrary to section 279§1 of the Criminal Code

Conduct II – contrary to section 279§1 of the Criminal Code

Conduct III – contrary to section 279§1 of the Criminal Code in conjunction with section 64§1 of the Criminal Code

12. The arrest warrant sets out at Box C the sentences imposed and remaining to be served:

Offence A/ 1 year imprisonment - 5 months and 15 days to serve

Offence B/ 2 years imprisonment - 2 years to serve

Offence C/ 1 year and 6 months imprisonment - 1 year, 3 months, and 12 days to serve

Total imposed 4 years 6 months – total left to serve 3 years 8 months 27 days [there is now significantly less outstanding, a matter I will come to]

13. The appellant was present at proceedings for Offence B and C. Offence A was partly held in his absence when he failed to appear and the court decided to proceed.

§III. JUDGMENT BELOW

14. The Judge considered the question of culpable delay at para 34 of the Decision and concluded that "There has been no culpable delay as is clear from the chronology in this case." He then set out a detailed case chronology in tabulated form to support his conclusion, but did not at that point explain further why there was no culpability, regarding it as self-evident.

15. Turning to the Article 8 question, at para 60 the Judge outlined the factors relied on in the balancing exercise in favour of extradition:

(1) There is always a very weighty public interest in upholding extradition requests and treaty obligations alongside offenders serving sentences imposed and ensuring that the UK does not come to be seen as a 'safe haven' for those seeking to evade justice.
(2) The RP [requested person, the appellant] is a fugitive.

(3) The offences within the warrant are serious since they concern dishonesty offences of dwelling/non-dwelling burglary where the RP acted in joint enterprise with others.
(4) The sentences imposed/to be served are significant. Even with time on remand accounted for he would still have 35 months to serve.
(5) There has been no delay in seeking the RP to serve his sentence, it is plain from the detailed chronology provided that the matters have been taken very seriously and been acted upon.
(6) The RP has recent previous conviction for like offences in the UK, and previous convictions in Poland.
(7) In MG11 provided by the Home Office [for settled status in the United Kingdom] it is stated that:
    a. When the RP applied for his settled status, he stated he did not have any previous convictions.
    b. There is nothing to suggest he declared his previous convictions in Poland, and
    c. This may have impact on his status and attached rights.

16. The Judge then identified the factors relied on by the applicant against extradition:

> a. These offences are old, dating back to 2001, 2003 and 2005.
> b. The RP was a child of 17 when he committed the first offence, 20 when he committed the second and 21 when he committed the third. He is now in his 40s.
> c. He has lived in England since 2006 openly, applied for his NI number in 2008, renewed his [Polish] passport in 2014 and he has been working and paying taxes.
> d. He has, at times, struggled with poor mental health, and been a suicide risk. In this respect he relies on the report of Dr Suesse. It is apparent there is a credible risk of suicide if extradited.
> e. He has indefinite leave to remain.
> f. He has qualified for permanent social housing.
> g. He has been remanded in custody on these matters since 16 June 2023

17. From paras 62-70 of the Decision, the Judge provided his conclusions on Article 8:

> "62. It is accepted the index offences are old even by extradition standards 2001-2005, there has been a significant delay since the RP left Poland in 2006.It was submitted this is culpable delay, that the RP has lived openly and not attempted to evade detection or arrest. In 2023 it was 17 years since he left. Against that is my finding that the RP is a fugitive, he left Poland to avoid a sentence of Imprisonment and his life here albeit lengthy has been in the knowledge that at some point that would catch up with him. The chronology prepared fully discloses the efforts made to locate him searching for him locally and nationally, steps were taken, the JA have not sat on their hands.
>
> 63. It was submitted by Miss Waterstone that the release pre-sentence surrender date was unusual, again with respect I have to disagree, prison spaces in Poland and elsewhere in Europe are space dependant, I was satisfied he knew he had to surrender to serve it and simply chose to come to the UK to avoid doing so.

64. The RP cannot say he has led a blameless life here, he has offended and been sent to prison [granted due to homelessness] for offences as recent as October 2022, his life cannot have been that good to have had to break into an unoccupied dwelling for shelter.

65. I accept the evidence of Dr Suesse cannot be ignored, she was an impressive expert witness, she had clear concerns over the RP s mental health and suicide risk. It was clear from her evidence if the RP was to be extradited, he would lose the two most important protective features, his sister and the desire to remain in the UK. He is on medication but still feeling suicidal, it is unlikely talking therapy would help alleviate his mental health issues. On the other hand, her assessment was in October 2023, there was and is no up to date assessment available, the RP himself said he felt better than before.

66. The previous suicide attempt was years ago in different circumstances, he is medicated in custody and feeling better for that, his mother is in Poland as a future protective feature and steps could be taken to protect him in prison in Poland as they can in the UK. There is a strong presumption as an EU state and signatory to the ECHR that Poland would discharge such obligations within their prison system.

67. Dr Bhanot's report discloses issues with the RPs low IQ and ability to understand, his key finding relates to the finding of an abusive childhood at the hands of his father. To return to Poland takes him back to the location of that trauma and to the place he previously attempted suicide. In contrast, there is no suggestion of any learning disability here, the RP was able to function in society as detailed [ante]there is no mention of suicide within his report.

68. Dr Zymots report was unchallenged by the JA, he describes the offences as minor without aggravating features, no violence used. The fact a warrant was not issued until 2023 makes extradition disproportionate and inexpedient. He opines that the sentences could be replaced by a tagged curfew and that as a young offender at the time of offending there should be a more lenient approach adopted. He too suggests that the delay in arrest infers this has not been taken seriously by the authorities' As Dr Brieskova submits this is a Polish lawyer re visiting the original sentences and passing opinion upon them, I cannot attach any real weight to his report, it is not for me to challenge the imposition of sentences from within another international jurisdiction unless they are flagrantly unfair and unjust. That does not seem to me to be the case here.

69. It was submitted I should take notice of early release provisions in accordance with ***Dobrowolski v Poland 2023 EWHC 763*** of course it may be the RP is given early release for the reasons submitted but it is not guaranteed and a discretionary power under Article 77 in Poland. In any event even with such considered it is still a substantial sentence and the RP has been at large since 2006.

70. Taking all of the evidence together and considering the submissions on the facts of this case I have to take the view, despite the age of the offences and delay that

the balance tips for the JA. The public interest is a weighty factor here, a substantial sentence to serve and a clear decision to become a fugitive to avoid it."

§IV. LEGAL FRAMEWORK

18. A District Judge's decision in a Part 1 case can be appealed under section 26 of the Act. The statutory appeal test is set out in that section, which provides as relevant:

> **"27 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."

19. The proper approach to applying the statutory appeal test has been variously considered by the senior courts (*Celinski v Polish Judicial Authorities* [2015] EWHC 1274 (Admin), para 24 ("*Celinski*"); *Love v Government of the United States* [2018] 1 WLR 2889, paras 25-26 ("*Love*")). In *Celinski*, the Divisional Court considered the proper approach of the appellate court to appeals made on Article 8 grounds. The court said from para 21:

> "21. …we heard substantial argument on the passages in the judgment of Lord Neuberger [in *Re B (A Child)* [2013] UKSC 33 ("*Re B*")]. Lord Neuberger set out at paragraph 93 the ways an appellate judge might consider a trial judge's conclusion on proportionality:
>
> > "There is a danger in over-analysis, but I would add this. 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).
> >
> > 94. As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense

> that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or a white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge's decision was not based on his assessment of the witnesses' reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence, which are factors whose significance depends on the particular case. However, if, after such anxious consideration, an appellate judge adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal."

23. In the light of the argument before us, we entirely endorse the general approach adopted by Beatson LJ and Aikens LJ, but consider that application of that approach by use of the analysis in the judgment of Lord Neuberger is likely to achieve a more consistent approach that is compliant with Article 8 and the provisions of the 2003 Act dealing with appeals.
24. The single question therefore for the appellate court is whether or not the district judge made the wrong decision. It is only if the court concludes that the decision was wrong, applying what Lord Neuberger said, as set out above, that the appeal can be allowed. Findings of fact, especially if evidence has been heard, must ordinarily be respected. In answering the question whether the district judge, in the light of those findings of fact, was wrong to decide that extradition was or was not proportionate, the focus must be on the outcome, that is on the decision itself. Although the district judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong."

20. In *Love,* Lord Burnett CJ 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."

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

22. As to the Article 8 evaluation, in *Norris v United States of America* [2010] UKSC 9 ("*Norris*"), Lord Phillips explained at para 55 that, for a challenge to extradition to succeed based on Article 8, "the interference with human rights will have to be extremely serious if the public interest is to be outweighed" and (para 82) it would "only the gravest effects of interference with family life will be capable of rendering extradition disproportionate to the public interest that it serves". Lord Phillips reviewed the proper approach to Article 8 at para 56:

> "instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition. A judge should not be criticised if, as part of his process of reasoning, he considers how, if at all, the nature and extent of the impact of extradition on family life would differ from the normal consequences of extradition."

§V. ISSUES

23. On appeal, there are two prime issues for this court to determine:

    (1) Was the Judge's finding on culpable delay in bringing the appellant to court wrong?

    (2) Was the Judge's conclusion on Article 8 wrong?

24. Ultimately, applying the statutory appeal test, ought the Judge have decided a question before him at the extradition hearing differently?

§VI. ISSUE 1: CULPABLE DELAY

Submissions

25. **Appellant**. The appellant went to the Polish Embassy on 24 January 2014. In applying for a Polish passport, the Polish state became aware of his residency in the United Kingdom. The arrest warrant was issued and certified only in 2023. That amounts to a culpable delay. The judge found no culpable delay and thus was in error.

26. **Respondent**. The Polish Embassy in London and the criminal and judicial authorities in Poland, while both part of the Polish state, are distinct and separate institutional entities.

Discussion

27. The court asked counsel on what evidence their submissions was made. Both accepted that the assertions about the structure of the Polish state were made in an evidential vacuum. There is no evidence either way about the internal arrangements within Polish authorities or "officialdom", as Mr Joyes termed it, borrowing from *RT v Poland* [2017] EWHC 1978 (Admin). It is clear that the District Court of Kwidzyn did not know the appellant's whereabout as at February 2016 because it ordered the suspension of the execution of his three sentences. Since the court did not know where he was, it ordered the clock to stop ticking so the Polish limitation period would not expire. Therefore, it is unarguable that the Polish judicial authorities did know that the appellant was in the United Kingdom. They plainly did not. The subsidiary argument advanced by Mr Joyes is that the court "ought to have known". He submitted this because there ought to be proper and effective channels of communication between branches of the Polish state.

28. It seems to me that this is an overly ambitious and unrealistic submission. It means that whichever Polish consular building anywhere in the world a person walks into to apply for a passport, the regional court in Poland which imposed the evaded sentence maybe many years previously should be informed. In a perfect world, that may be desirable. While Mr Joyes submitted that the court should conclude that "the state talks to itself", that only goes so far. He must submit that all parts of the state talk to all other parts, or at least, all relevant parts must be taken to mutually communicate. That said, I do not accept Dr Brieskova's submission that the Embassy and the judicial authorities in Poland are "separate entities" entirely. They are different parts of the same Polish state. However, it seems to me that the disparate elements of a complex institutional organism like a national state cannot automatically be fixed with knowledge of another remote part of it – here in a different country - in the absence of evidence to this effect. I cannot accept that the District Court in Kwidzyn ought to be fixed with the knowledge of those who processed Mr Galadzun's application for a passport when he applied in London. I therefore find the inference that Dr Brieskova invites me to draw that different institutional parts perform different functions to be significantly more realistic and reasonable.

29. It is certainly the case that, as Mr Joyes put it, "something happened in 2022". Relying on the evidence of Mr Zygmont the Polish lawyer, he points out that the arrest warrant was issued in December 2022. It seems, however, that the wanted notice was not issued in respect of the first offence chronologically (Offence A) until September 2021. The sentence was imposed in October 2001. Therefore, there has been a delay in excess of 20 years in issuing the wanted notice. That is an inordinate delay. It is what Mr Joyes submits is the "unexplained factor", and indeed Dr Brieskova is unable to provide any explanation for it. However, that is not the end of the matter. The Polish authorities were not dilatory about the other two offences. The wanted notice for Offence B was issued in November 2006, that is approximately six months after Mr Galadzun fled Poland for the United Kingdom. As far as Offence C, the wanted notice was issued in January 2007. There were local searches for the appellant in Poland, followed by nationwide searches with wanted notices. The authorities used internet, social media and other media to try to find him and entered his data in the SIS system. The court regularly checked with the police for news of progress. There is no doubt, to my mind, that the Polish authorities were actively looking for the appellant and wanted to find him.

Conclusion: culpable delay

30. In a series of judgments, this court examined cases where Poland as requesting state has not acted timeously thereby creating substantial delay (see, for example, *Juszczak v Poland* [2013] EWHC 526 (Admin); *Tomasziewicz v Poland* [2013] EWHC 3670 (Admin)). However, I find that there is no culpable delay in this case on the part of the respondent. The Judge did not err in his conclusion on culpability. The obligations where a requesting state does not know the location of a fugitive are clearly set out in Chamberlain J's helpful judgment in *Pabian v Circuit Court in Warszawa* [2024] EWHC 2431 (Admin) at para 48:

> "When an issuing state seeks an individual who has fled outside its borders to evade its justice system, without indicating which country he has fled to, that state is under no obligation to devote resources to making enquiries about his whereabouts. By the same token, a decision by an issuing state to enter an alert

> on SIS, without more, does not trigger an obligation on the judicial authority or police force of every other Member State to check its own official records or otherwise search for the individual concerned. In this situation, as the Divisional Court put it in *RT*, "neither the foreign judicial authority nor the NCA can be expected to explore the byways and alleyways of British officialdom to discover whether someone is in this country". This informs the approach to questions of delay in Article 8 cases where the appellant is a fugitive."

31. The Judge's conclusion on culpable delay was not wrong.

§VII. ISSUE 2: ARTICLE 8

Submissions

32. **Appellant**. The appellant relied on the factors below in favour of a conclusion that extradition amounts to a disproportionate interference with his Article 8 rights. I exclude culpable delay as the court has found against this.

- There is very significant delay of around 20 years;
- The offences in Poland are "minor" objectively;
- The circumstances leading to the offending include that the appellant was young (aged 17, 20 and 21) and addicted to drugs and moving in "bad" circles; he was suffering from trauma from an abusive father, according to his sister;
- He has settled in the United Kingdom;
- He has led a lawful life here save for one conviction;
- He has roots here now, including his sister who is his closest support;
- He has significant mental health problems with a credible risk of suicide;
- A return to Poland will increase his risk of suicide, including being returned to the place he was traumatised and maltreated by his father.

33. **Respondent**. Against this, Dr Brieskova relied on the following factors:

- The explanation for the delay is the appellant's fugitivity;
- The Polish offences were not trivial;
- There remains a "long time for him to serve in Poland";
- His ties to the United Kingdom are "not so strong";
- He has a criminal conviction in the United Kingdom;
- He did not disclose his previous offending to the Home Office in his application for settled status;
- There is no evidence of recent attempts at suicide.

Discussion

34. There are no material factual disputes on the proportionality analysis. The contest between the parties is principally about factor evaluation. The determination of an Article 8 bar to extradition depends on the outcome of a weight-sensitive balancing exercise. In *Celinski* the Divisional Court commended a "check list" approach. This is

undoubtedly to introduce welcome organisational and structural rigour, as in other notable checklists such as that under section 1(3) of the Children Act 1989 when evaluating child welfare (a statutory checklist). However, a checklist approach should not be confused with a tick-box exercise. What counts is substance over form; not numerical multiplicity of factors but their measured weight.

35. On Issue 1, the court has found that there is no culpable delay on the part of the respondent. That being so, the principal and operating cause for delay here is Mr Galadzun's deliberate fugitivity. He accepted (finally) when giving evidence before the Judge that he left Poland and came to the United Kingdom to avoid serving his prison sentences in Poland. That much was evident from the chronology, even should he have not admitted the same. This is because he left Poland for the United Kingdom the month after the Polish court revoked his release on parole for Offence A and he was due to surrender to prison to begin his custodial sentences. He failed to turn up. Instead, he left the country for the United Kingdom. Therefore, from that point in the middle of 2006, the true explanation for the delay has been the appellant's determined effort to stay out of the reach of the Polish judicial authorities by residing in Britain and avoid the prison sentences he is due to serve.

36. Turning to the nature of the offences, I cannot accept that they are "minor". They do not appear in the Criminal Practice Direction table (para 12.2.4) for section 21A(3)(a) seriousness of conduct evaluations that require "exceptional circumstances" before extradition is deemed proportionate. These are three burglaries. Two are of commercial premises and were group offences. The parties agreed that one was of a basement or cellar of a domestic residence. These were not connected offences but occurred over the span over three or four years. It is true that the appellant was much younger, aged between 17 and 21, and was addicted to drugs. But the Polish court undoubtedly will have considered all these matters in setting the level of sentencing.

37. While Mr Galadzun has settled in this country, the basis of how he has settled is significant. He was in the United Kingdom as a fugitive from Polish justice. He had a duty to inform Polish authorities of changes of address over seven days in duration. He did not do this. In 2022, he made an application for settled status and misled the British authorities by failing to disclose his Polish convictions. As Dr Brieskova informs the court, the Home Office, understandably, is having to reconsider his grant of status given the deception. Shortly after his application for settled status, he committed a burglary in the United Kingdom. This offending resonates with his Polish criminality. While I emphasise that I place little store in the other criminal cautions he has here, it cannot be said that he has led an unblemished life in this country. He fails to fit Lady Hale's description in *HH* of a life that is "new, useful and blameless" (para 47). He has had a prison sentence imposed on him by the United Kingdom criminal court and deceived the public authorities in an application for settled status. Both of these are significant matters to be weighed.

38. He is close to his sister who lives here, whom he describes as "his support in life". However, he does not live with her, nor provides care for her. As a protective factor, her influence has not prevented him from committing a criminal offence meriting a sentence of imprisonment. He has no dependent children and does not support his sister. He retains ties in Poland. His mother lives there and she remains in contact with him. Indeed, she came from Poland to visit him in the United Kingdom. Therefore, on return to Poland he would not be entirely without support. The loss of family life from

widening the physical distance between him and his sister is mitigated in effect by the gain of moving back closer again to his mother. He says that he is close to his mother and she would visit him in Poland.

39. However, extraditing him to Poland would return him to the country where, as is evidenced in the expert reports, he suffered physical and emotional abuse from his father "from a very young age". This damaging history should never be underestimated. However, he is now a man in his forties. There is a very substantial period of time – nearing two decades – since he was last in Poland. Therefore, the impact of that early trauma may be somewhat different now as a mature adult to the effect if this court were considering returning him in his very early twenties and thus much closer to the original traumatic events. It is important to contextualise the evolving situation.

40. Dr Suesse, a clinical forensic psychologist, told the court below that there is a "credible threat" of potential suicide. I operate on the basis that this remains the situation. However, the one time he did attempt suicide was when he was a very young man in Poland. There is no evidence of a repeated attempt in nearly 20 years. That seems to me significant. Mr Joyes makes the point that the critical factor for Article 8 purposes is the increased threat of suicide should he be extradited. I can accept that submission on the evidence, supported as it by Dr Suesse's evidence. I can envisage, given he has lived in this country for almost 20 years, that being returned to Poland will have an adverse impact on his mental health. How should the court view this? There is no reason to believe that the Poland prison authorities could not provide support for his mental health in a similar way to the British authorities. Indeed, I accept the submission that there must be a strong presumption that this is the case, in the absence of contradictory evidence, given that Poland is a European Union state. Dr Suesse's opinion is that the appellant would be at "high risk" of attempting suicide if returned to Poland. Regrettably, in any prison institution, it is impossible to completely prevent self-harm and suicide attempts. However, as Mr Joyes realistically conceded, the court can proceed on the basis that "Poland can safeguard his mental health in the absence of any other evidence." It is noteworthy that while in prison custody in this country, the appellant has been relatively stable. I take all this into account, remaining realistic about the absence of any universally failproof safeguarding measures. Of significance also is that the appellant's mental health did not prevent him engaging with the hearing below and, moreover, he was able to give evidence to the Judge.

41. Mr Galadzun still had 2 years, 3 months and 17 days of his Polish prison sentence still to serve as of the hearing date before me. This is a substantial outstanding sentence. He has evaded it for two decades. But the Polish authorities must decide what to do with his case as it now stands and the extent to which, once he becomes eligible for early release, the facts of the delay due to his fugitivity can discount his sentence. That is not a matter for this court. Indeed, originally there were to be submissions about the early release provisions in Poland, but as events unfolded, Mr Joyes, correctly to my mind, did not pursue the point – another example of his sober and sensible approach.

Conclusion: Article 8

42. I find that extradition would interfere materially with Mr Galadzun's Article 8 rights. Such a conclusion is inescapable on these facts. Article 8 being engaged, the question turns to the proportionality of the interference.

43. I find that the circumstances of this case are a long way from the "exceptional" ones deemed necessary by Lord Phillips in *Norris* (para 56). Here the interference with the appellant's Article 8 rights is not disproportionate once properly measured. Such interference remains far from what Baroness Hale termed in *HH* the "exceptionally severe" (para 8, proposition 7). I do not accept that this is a finely balanced case, but judge the factors in favour of extradition to significantly outweigh those against. That said, I recognise that even in case of proven or accepted fugitivity, the fact of delay, especially substantial delay, can weigh in the individual's favour. But the delay here has not been culpable; the judicial authorities in Poland did not know where the appellant was. Accordingly, the effect of the non-culpable delay does not weigh in any great measure in the appellant's favour. However, the cold fact of delay of nearly two decades is a factor against extradition and particularly when combined with the mental health and self-harm concerns. This court takes such matters seriously. More positively, he appears stable presently, receiving medication and is compliant with that treatment. It is important not to lose sight of what Dr Suesse actually said. It is that the appellant is a credible threat of suicide in this country, but that risk increases if he is returned to Poland (summarised in judgment below, para 38). There have been no suicide attempts for two decades and the context of that distant attempt is critical: the appellant was then "in a bad place", as the Judge put it, taking drugs and mixing "with a bad crowd" (ibid., para 40). All this reduces the weight of the mental health concerns without eradicating them. Vitally, at no point does Dr Suesse suggest that the suicidal risk on return would be unmanageable.

44. Therefore, to my mind it is clear that the balance falls clearly and unmistakably in favour of extradition because of an array of factors of far more substantial weight. The appellant has been a fugitive from justice for almost 20 years; he came to the United Kingdom in a calculated way to avoid the lawful sentence of the Polish court; the delay is therefore directly attributable to his attempts to evade Polish justice; he has committed a similar criminal offence here to those he is evading prison sentences for in Poland; he deliberately misled British authorities in making a settled status application; he has his mother as a protective factor in Poland; and there is a strong public interest in a person who has evaded a prison sentence being obliged to serve it. In promoting that objective, the United Kingdom honours its international treaty obligations with Poland and pays respect to the judicial determinations of its treaty partner. I remind myself of another of Baroness Hale's propositions in *HH*, where she said (para 8, proposition 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."

45. This accurately encapsulates the position here. The above factors when aggregated, significantly overwhelm those against extradition.

§VIII. DISPOSAL

46. For the purposes of section 27(3)(a) statutory test, I judge that the question of the appellant's extradition should not be decided differently. There was no culpable delay. On proportionality, using the taxonomy set out by the Lord Neuberger in *Re B* at para 93, this case falls into Limb (ii): the Judge's proportionality conclusion was "right". While the appellant's Article 8 rights are engaged, extradition would not be a disproportionate interference with them.

47. That said, I remain mindful of the evidence about suicide risk, a concern that has been assiduously managed in this country. Certainly, there is no evidence placed before me to suggest that Poland as an EU state would ignore mental health concerns exhibited by the appellant. But it remains essential that on his return the United Kingdom and Polish authorities cooperate to ensure that relevant medical records are passed across so effective risk management and medical support, if indicated, can continue.

48. The appeal is dismissed.

Appendix A

Materials

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Hearing bundle	209
Authorities bundle	263
Applicant skeleton	11
Respondent skeleton	14