Neutral Citation Number: [2025] EWHC 329 (Admin)

Case No: AC-2023-LON-000487

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/02/2025

Before :

MR JUSTICE MOULD

- -

Between :

MARIUSZ SOWINSKI	**Appellant**
- and –	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

LOUISA COLLINS (instructed by **Taylor Rose Solicitors**) for the **Appellant**
STEFAN HYMAN (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 31st October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 21st February 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 MOULD

MR JUSTICE MOULD :

Introduction

1. The Appellant, Mariusz Sowinski, appeals from the order of the Westminster Magistrates' Court made on 18 January 2023 that he be surrendered to Poland to serve the remaining 646 days of a combined custodial sentence of 3 years for three offences, pursuant to section 21(3) of the Extradition Act 2003 **["the 2003 Act"]**. Poland is a Category 1 territory for the purposes of the 2003 Act. These extradition proceedings are governed by Part 1 of the 2003 Act.

2. The Appellant's extradition hearing took place before the District Judge on 21 December 2022. Both parties were represented by counsel. The Appellant gave live evidence at the hearing and was cross examined. His former partner gave evidence in writing but did not attend the hearing as her evidence was not challenged by the Respondent Judicial Authority **["JA"]**.

3. On 18 January 2023 the District Judge handed down her judgment in writing **["the judgment"]**.

4. The appeal is brought under section 26 of the 2003 Act. Permission to appeal was granted on the papers by Choudhury J on 25 October 2023. The Appellant was represented by Ms Louisa Collins and the Respondent by Mr Stefan Hyman. I am grateful to them for their helpful submissions.

Grounds of appeal

5. The appeal proceeds on two grounds –

   (1) That the District Judge was wrong to find that the requested extradition of the Appellant would not be oppressive by reason of the passage of time (section 14 of the 2003 Act).

   (2) That the District Judge was wrong to find that extradition would not be a disproportionate interference with the Appellant's right to respect for his private and family life protected under Article 8 of the European Convention of Human Rights **['ECHR']**.

The arrest warrant

6. The JA seeks the Appellant's surrender pursuant to an arrest warrant **["AW"]** issued on 5 January 2017 and certified by the National Crime Agency **["NCA"]** on 2 December 2021.

7. The AW gives particulars of the following offences **["the AW offences"]** –

   (1) Offence 1 – On 26 April 2003, the Appellant participated in a riot by hurling rocks, bottles, boards and other objects, while fully aware that the participants in the riot were committing a violent assault on the life, health and property of many individuals.

(2) Offence 2 – On 21 July 2004, the Appellant and two others attempted to coerce a woman into paying them 'protection money' in the sum of 300 Polish zloty (PLN) by threatening to cut her face and torch her apartment.

(3) Offence 3 – on 22 July 2004, the Appellant and two others attempted to coerce a man and a woman into paying them 'protection money' in the sum of 250 PLN by threatening to cut off a security guard's ear, and by using intimidating language such as 'you must pay up or get out of here'.

8. The AW states that the Appellant has a remaining sentence of 646 days of imprisonment to serve in respect of a combined custodial sentence of 3 years upheld on appeal on 27 October 2015 which became final and binding from 10 February 2016.

Factual background

9. On 5 April 2005 the Appellant was sentenced in his presence to 10 months' imprisonment for the first AW offence. That sentence was suspended for a period of 3 years.

10. On 20 October 2005 the Appellant was sentenced in his presence to 2 years and 6 months' imprisonment for the second and third AW offences.

11. On 11 May 2006, the Appellant in his presence received a further sentence of 1 year's imprisonment for a further offence of blackmail. That further offence – offence 4 - is not included in the AW.

12. On 15 June 2006 the Appellant committed offence 5, a public order offence.

13. On 10 January 2007 the suspended sentence imposed in respect of the first AW offence was activated.

14. On 3 August 2007 the Appellant was convicted and sentenced in his absence to a term of 1 year and 6 months' imprisonment in respect of offence 5.

15. The Appellant had in fact moved to the United Kingdom in 2006.

16. On 25 October 2010 a European arrest warrant **["EAW"]** was issued requesting the Appellant's extradition to Poland in respect of offence 5. It appears that the JA had intended at that time also to issue a European arrest warrant in respect of the Appellant's other offences but, due to an unexplained error, that second warrant was not received by the British authorities. Following certification of the EAW, on 17 July 2013 the Appellant's extradition to Poland was ordered by the Westminster Magistrates' Court. On 13 March 2014 the Appellant was surrendered to Poland to serve his sentence for offence 5.

17. Prior to the Appellant's release from prison, on 5 December 2014 the JA contacted the British authorities stating that two European arrest warrants had been issued for the Appellant but that he had been surrendered only in respect of one. On 29 December 2014 the NCA confirmed that the Appellant has been extradited on the EAW only in respect of offence 5. The NCA stated that no other warrants or requests for consent had been received in relation to the Appellant.

18. On 16 January 2015 having served his prison sentence for offence 5, the Appellant was released from custody in Poland.

19. The Appellant did not renounce his entitlement to specialty in relation to the AW offences and offence 4. On 21 January 2015, pursuant to article 27 of the Framework Decision dated 13 June 2002 on the European arrest warrant and the surrender procedures between Member states **["the Framework Decision"]**, the JA issued a request for consent to the Westminster Magistrates' Court to enforce the custodial sentences imposed on the Appellant in relation to those offences.

20. On 26 January 2015 the District Court in Poland personally notified the Appellant of the consent proceedings. At his extradition hearing on 21 December 2022, the Appellant gave evidence that following his release from custody in mid-January 2015 he had remained in Poland for 3 to 4 weeks and had left Poland to return to the UK in mid-February 2015. He has remained in the UK since that date.

21. The JA's request for consent was heard at the Westminster Magistrates' Court on 14 April 2015. Consent was granted for the enforcement against the Appellant of the then outstanding prison sentences in relation to the AW offences and offence 4.

22. On 19 May 2015 the Appellant lodged an application through his lawyer in Poland for his outstanding sentences for the AW offences to be aggregated. On 27 October 2015 the Polish court imposed a combined sentence of 3 years' imprisonment for the AW offences. On the Appellant's appeal, on 10 February 2016 the appeal court in Poland upheld that combined sentence.

23. Following the Appellant's subsequent failure to report to prison to serve his sentence, the JA suspended enforcement proceedings and on 4 August 2016 issued a domestic warrant. The JA then issued the AW on 5 January 2017.

24. The Appellant was arrested on 18 August 2022. He was remanded on conditional bail, on which he remains.

The District Judge's judgment

25. In [33] of the judgment, the District Judge reproduced the Appellant's proof of evidence which he adopted as his evidence-in-chief. The Appellant is a 45 year old man who moved to the UK from Poland in 2006 seeking better opportunities, particularly for work. His partner at that time joined him in the UK in 2007. They have 3 children together, all of whom were born in the UK. The eldest was 14 years old at the date of the extradition hearing, the second child was 12 years old and the youngest was 10 years old.

26. The Appellant and his partner had separated about six years prior to the extradition hearing but had continued to live close to each other. The Appellant said that he maintained a good relationship with his former partner. They were bringing up their children together. The Appellant worked as a Thai boxing coach. His partner worked at a children's school and had a weekend job as a teaching assistant. He and his partner shared the financial responsibilities of looking after their three children. He had applied for settled status and awaited the response.

27. The Appellant said that following his extradition back to Poland in 2014, he served his prison sentence for offence 1 and then returned to the UK –

"I spent 1 1/2 years in prison and came straight back to England afterwards. When I was released, I was allowed to leave the country and I did so. I became aware that there were other offences, but I was not extradited for any of them and to my knowledge Poland never applied to the UK to waive specialty. When I was released, I was free to leave Poland as they could not deal with those offences, and I did so. The Polish authorities knew that I was resident in England and yet it has taken many years for them to come back to extradite me. In that time, I have developed a successful business and have a close and loving bond with my children. It would be devastating for them if I were to be extradited.

Back in 2003 and 2004 my life was in a different place. I was a young man, and I was making bad decisions. I was mixing with people I regret being involved with and doing things that I now look back on as wrong".

28. The Appellant said that he had returned to the UK following his release from custody because his family was in the UK and he has three children. He had remained in Poland for a few weeks as he had family matters to attend to, following the death of his father.

29. Under cross examination, the Appellant said that he did not recall being notified in late January 2015 of the JA's request for consent to enforce his sentences for the AW offences. However, he said that he had been aware of the possibility that he would be required to serve his sentences for those offences, which was why his lawyer had later applied for them to be aggregated into a joint sentence.

30. In [42]-[44] of the judgment, the District Judge records the following answers given by the Appellant in cross examination -

"It was suggested that after he received the notification about the consent request he left Poland and came to the UK. He said that he wouldn't say that it was upon receiving it that he left, and he was not barred from leaving the country and he was allowed to leave. He said his passport was not taken from him he was allowed to leave the country and then said "if they will find me they'll find me". He agreed he did not tell Poland that he was leaving and didn't notify anyone once he was here in the UK. He was fully aware of the application to aggregate the sentence and was here in the UK at the time and his lawyer was dealing with it.

The [Appellant] agreed that he was notified at the date of the aggregated sentence and said that he wasn't required to be there and his lawyer forwarded to him. He agreed that he appealed against this through his lawyer. He also said that he was aware that after the appeal the sentence of three years was upheld. He agreed that he knew from that day they would have to serve the balance of the sentence from those three offences. He was asked whether he knew that he was required to report to prison and he said that he did not and no one requested him to attend prison. He said that he was already here in England so it's not like he left in order to flee after the judgement. It was suggested that he knew that he was required to go to prison to serve the [sentence] then failed to do so and he said "I was here I wasn't going to go back I was here with my family"."

31. The Appellant's partner gave evidence in her witness statement that he was a very engaged father and an excellent parent. She said –

"If [the Appellant] were to be extradited, it would be devastating for our [children]. Not only is he very involved in their lives, but he also helps to support them. It is not so much that I would not be able to afford to provide the basic necessities on my own, but the activities that the [children] are involved in required equipment that is very expensive. The problem is that the [children] probably wouldn't be able to develop their passions and explore their interests because I would not be able to afford the equipment. While there is not a fixed amount that [the Appellant] pays financially each month, we evenly split all expenses when it comes to our [children].

Our [children] are very worried for [the Appellant]. The emotional impact has been especially difficult for our youngest child… the thought that [the Appellant] would not be able to carry on with his life like normal, and the thought that he would not be around would be very hard for [them] to process".

32. The District Judge stated her findings of fact at [45] of the judgment. They include the following –

> *"(a) … Perhaps the most important finding in this case is one of fugitivity. The JA asserts that the [appellant] is a fugitive from justice and this is denied by the [appellant]. I do not need to deal with the time prior to the [appellant's] previous extradition because no doubt that would have been dealt with at the last hearing. For whatever reason it seems that Poland intended that the [appellant] be returned for offences 1-5 as contained within the chronology. For some reason that did not happen although that does appear to be an error and no culpability lies at anyone's door in respect of that. In 2014 the [appellant] was surrendered to Poland in respect of the previous warrant only which related to offence 5. Because the [appellant] did not renounce his entitlement to specialty and after Poland realised the error with the warrants, they made a consent request. However, it was only 18 days prior to the [appellant's] release that Poland were informed that his extradition had only related to one of the two warrants. The [appellant] was released on the 16th of January 2015. At that point the JA could not possibly have detained him to enforce the sentence in relation to offences one to three. Had they done so they would have been in breach of speciality. It could be said that having received confirmation from the NCA that only one warrant could be dealt with they had 18 days before the [appellant's] release to seek consent. However, experience tells me that 18 days would not have been sufficient time to seek sent, notify the [appellant] and obtain a hearing at Westminster. Consent therefore would not have been given prior to the [appellant's] release. The JA therefore issued a consent request very shortly after the [appellant's] release from custody. The request was issued on the 21st of January 2015 and on the 26th of January 2015 the [appellant] was personally notified of the consent proceedings before Westminster Magistrates Court. I fully accept the information provided by the JA and accept that the [appellant] was personally notified on this date as indicated. I do not accept what the [appellant] says about in fact he did not receive it. On his own account he left Poland in mid-February of 2015 by which point he had already been person notified of the consent request. I am quite satisfied to the criminal standard that the [appellant] is a fugitive from justice. He was fully aware of proceedings and having served*

his sentence upon his return in 2014 he was released but then very quickly was served with notification of the consent proceedings. I have no doubt that he did not want to serve a further sentence and as a result chose to leave, coming to the UK in order to avoid serving this sentence.

…

(d) I accept the evidence from the [appellant] that and his ex-partner about his children and his family life here.

(e) I accept that the [appellant] has lived and worked in the UK for a number of years and has committed no offences here in the UK".

33. In [49] of the judgment, the District Judge rejected the Appellant's contention that his extradition would be oppressive by reason of the passage time pursuant to section 14 of the 2003 Act.

34. In [58] of the judgment, the District Judge found that it would not be a disproportionate interference with the Appellant's rights under article 8 of the ECHR to order his extradition to Poland.

The powers of the court on appeal

35. An appeal lies to this court under section 26 of the 2003 Act. The relevant powers of this court on appeal are stated in section 27 –

"27(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)….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.

…

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

(a) order the person's discharge;

(b) quash the order for his extradition".

Ground 1 – section 14 of the 2003 Act

36. Section 14 of the 2003 Act states –

"A person's extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have—

(a) committed the extradition offence (where he is accused of its commission), or

(b) become unlawfully at large (where he is alleged to have been convicted of it)".

37. It is well established in case law that, ordinarily, this bar to extradition is not available to a requested person who has brought about the delay in extradition proceedings by leaving the jurisdiction of the requesting state as a fugitive. In Kakis v Government of the Republic of Cyprus [1978] 1 WLR 779, at 782A Lord Diplock said –

"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. Saving the most exceptional circumstances it would be neither unjust nor oppressive that he should be required to accept them".

The District Judge's reasons

38. In the present case, the District Judge found that, following the Appellant's release from custody, he left Poland in early 2015 as a fugitive. He was not able to invoke the bar to his extradition under section 14 of the 2003 Act. Her reasons are stated in [48] of the judgment –

"Dealing shortly with the fugitive point, the court in Kakis added that the person cannot rely on the passage of time argument if he has been responsible for the delay either by fleeing the country, concealing his whereabouts and/or deliberately evading arrest. The [appellant] is a fugitive and so is not entitled to rely upon this challenge".

The Appellant's submissions

39. On behalf of the Appellant, Ms Collins submitted that the District Judge had been wrong to find the Appellant to be a fugitive in circumstances where he was exercising his speciality rights. In February 2015, when the Appellant left Poland and returned to the UK, he enjoyed the protection given to him under the speciality principle. At that date, the JA had no legal right to detain him or to prevent him leaving the jurisdiction. That being the position in law, it was not open to the District Judge to find that he had returned from Poland to the UK in February 2015 as a fugitive from justice.

40. Ms Collins submitted that by 14 April 2015, the date on which the Westminster Magistrates' Court granted the JA's request for consent to enforce the outstanding sentences in relation to the AW offences, the Appellant was already back living in the UK. Thereafter he took no positive steps to evade or to avoid arrest. He simply carried on living in his country of residence. He had continued to engage with the legal process in Poland via his lawyer, as he was entitled to do. In these circumstances, he had not placed himself beyond the reach of the jurisdiction or legal process in Poland.

41. It was submitted that as the Appellant had not left Poland in February 2015 as a fugitive, he was entitled to rely on the long passage of time since he was first sentenced to a term of immediate imprisonment for the second and third AW offences on 20 October 2005 and so unlawfully at large, and to contend that it would be oppressive to extradite him for the AW offences. Properly analysed, the facts of this case did establish that extradition to serve his remaining sentence for the AW offences was oppressive by reason of the passage of time, pursuant to section 14 of the 2003 Act.

The issue

42. The crucial question raised by these submissions is whether it was open to the District Judge to find that the Appellant had left Poland in mid-February 2015 as a fugitive from justice, notwithstanding that as at that date he was protected by the speciality principle from being returned to custody in Poland to serve his remaining prison sentences for the AW offences.

The specialty principle

43. Article 27(2) of the Framework Decision states the speciality principle –

> *"Except in the case is referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered".*

44. By virtue of articles 27(3) and (4), the prohibition stated in article 27(2) does not apply in the following case –

> *"(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.*
>
> *4. A request for consent shall be submitted to the executing judicial authority… Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision".*

45. In R v Seddon [2009] EWCA Crim 482; [2009] 1 WLR 3242, at [5], the Vice President (Hughes LJ) gave the following explanation of the speciality principle –

> *"5. Historically, extradition was generally achieved through separate bilateral treaties between States. Commonly the power of the requested State to refuse extradition in some circumstances was preserved by the terms of such treaties. To give effect to that practice, the principle evolved that if A requested a prisoner from B, A would identify the offence for which the prisoner was wanted, so that B could decide whether there was a sufficient reason to refuse to surrender him. With that went the practice that if surrendered the prisoner could only be dealt with for the offence for which he had been sought, otherwise plainly the surrendering state's power to refuse would be circumvented. That principle is called specialty. It has been recognised in this country by successive statutes dealing with our local rules for extradition both inward and outward. The rationale for it may owe something to the*

protection of the individual, but it plainly lies principally in the international obligation between States".

Fugitivity

46. In Wisniewski v Poland [2016] EWHC 386 (Admin); [2016] 1 WLR 3750, at [59], the Divisional Court identified the following underlying general principle in the previous case law on fugitivity in the context of extradition proceedings –

"Where a person has knowingly placed himself beyond the reach of a legal process he cannot invoke the passage of time resulting from such conduct on his part to support the existence of a statutory bar to extradition".

47. In Pillar-Neumann v Austria [2017] EWHC 3371 (Admin), the Divisional Court said that in judging whether the requested person was a fugitive, the essential question was whether he or she had put themselves beyond the reach of legal process. In that case, it was argued that the requested person was a fugitive in having failed to return to Austria from the UK in order to answer to a domestic arrest warrant of which she had become aware. At [69] the Divisional Court rejected that argument –

"She was not fleeing the country or concealing her whereabouts. She was not taking any positive steps to evade or avoid arrest. She was simply carrying on living in her country of residence, as she was lawfully entitled to do".

48. In De Zorzi v France [2019] EWHC 2062 (Admin); [2019] 1 WLR 6249, the requested person had resided in the Netherlands for many years. She had been present at her trial in France but had returned to the Netherlands, with the permission of the French court and before the court had given judgment. It was only after she had returned to her home in the Netherlands that she was informed of her conviction and sentence. She was subsequently arrested on a visit to the UK pursuant to a European arrest warrant issued by the French judicial authority.

49. At [55]-[62] the Divisional Court held that in these circumstances, Ms De Zorzi was not a fugitive. She had never been unlawfully at large, as she had left the French court with the permission of the court prior to judgment in her case: see [55]. She had not knowingly placed herself beyond the reach of the legal process in France, as she had already been beyond the reach of that process when informed of her conviction and sentence. In those circumstances, declining to surrender herself to France did not constitute knowingly placing herself beyond the reach of a legal process. It amounted instead to declining to place herself within the reach of that process. Following Pillar-Neumann, she was not obliged to take that positive step.

50. However, at [63] Garnham J observed –

"I would add that had the Judge found as a fact that the Appellant had fled back to Holland during the course of the French proceedings and without the Court's permission; or was told on 28 June 2001 at the French Court that she had been convicted and sentenced, so that she knew that that was the position when she returned to the Netherlands, I would have held that the Judge's conclusion on fugitive status was correct…".

51. In Ristin v Romania [2022] EWHC 3163 (Admin) at [23]-[32] Fordham J analysed these three authorities in some detail. At [29] he stated the core principle –

> *"All three of these cases recognised the core principle which asks whether the requested person has acted knowingly to place themselves beyond the reach of the legal process…; together with the recognition that the classic situation in which an individual is a fugitive is where they have fled the country, concealed their whereabouts or evaded arrest…".*

52. At [30], Fordham J said that in that case –

> *"… it is true that [the appellant] was going back to the UK which had previously been his home. It is true that there was no legal obligation imposed on him to stay in Romania. But an individual can be a fugitive by returning to a country where they have previously been living. And an individual can be a fugitive by leaving a country, notwithstanding that no legal obligation to stay has imposed upon them. Indeed, the classic instance of "evading arrest" need not arise in the context of any obligation having been imposed. I think that, in De Zorzi, the idea of having "left the court with the permission of the court" (at [55]) was something distinctive and positive, more than simply the absence of a restriction on leaving the country".*

Discussion and conclusions

53. In the present case, it was the Appellant's evidence at his extradition hearing that at the time of his release from custody in mid-January 2015, he was aware that there were other matters outstanding against him *"specifically matters which related to sentences of imprisonment"*. Although he said that he did not recall receiving notice from the JA of the request for consent to enforce the outstanding sentences for the AW offences, the District Judge made a clear finding of fact that on 26 January 2015 he was personally notified of the consent proceedings before Westminster Magistrates' Court. The Appellant does not challenge that finding in this appeal.

54. On his own evidence, the Appellant was well aware that, as he had not waived speciality, the JA was not able lawfully to enforce the outstanding sentences against him at the date of his release in mid-January 2015. As he said in his evidence-in-chief, when he was released, he was free to leave Poland *"as they could not deal with those offences, and I did so"*. He wanted to return to the UK and resume his family life in this country.

55. Nevertheless, on his own admission, the Appellant was under no illusion as to the prospect of having to serve the outstanding prison sentences in relation to the AW offences. As he said during cross examination, it was *"pretty obvious to assume"* that the JA intended him to serve a further custodial sentence.

56. In short, at the time of the Appellant's departure from Poland in mid-February 2015 he knew that for the time being, the JA could not prevent him from leaving the Polish jurisdiction, by virtue of the speciality principle. He nevertheless expected that the JA would take steps to make him serve his outstanding sentences. He was aware that a legal process had been put into operation by the JA, with a view to executing the outstanding custodial sentences against him.

57. On the basis of this evidence, the District Judge was sure that the Appellant had made the decision to leave Poland because he did not want to serve a further custodial sentence; and had returned to the UK in order to avoid having to do so. In my judgment, that was a finding which was justified on the basis of the evidence given by the Appellant. The fact was that he did leave Poland in mid-February 2015 knowing that the JA had begun the legal process to obtain consent for returning him to custody to serve his outstanding sentences. By returning to the UK the Appellant placed himself outside the Polish jurisdiction and so beyond the reach of the JA.

58. That was sufficient to justify the District Judge's conclusion that he was a fugitive, applying the core principle identified by the court at [59] in *Wisniewski's* case.

59. The District Judge's conclusion that the Appellant was a fugitive is not vitiated by the fact that, at the date on which he left Poland, the Appellant was protected under the speciality principle. The position of the Appellant in mid-February 2015 when he left Poland and returned to the UK is essentially the same as that described by Fordham J in [30] in *Ristin's* case. The Appellant was going back to the UK which had previously been his home. There was no legal obligation imposed on him to stay in Poland. However, as Fordham J said, an individual can be a fugitive by leaving a country, notwithstanding that no legal obligation to stay has imposed upon them.

60. The consistent point is that here, as in *Ristin's* case, the requested person took advantage of the opportunity offered by the absence of any legal obligation to stay, to place himself beyond the jurisdiction of the JA and so beyond the reach of the legal process to enforce his outstanding sentence. The mere fact that in the present case, that opportunity arose in mid-February 2015 by virtue of the speciality principle does not justify a different approach to the application of the core principle stated in *Wisniewski's* case.

61. Counsel's contention that it was not open to the District Judge to find the Appellant to have been a fugitive during his period of protection under the speciality principle is not supported by authority. Miss Collins relied on both *Pillar-Neumann* and *De Zorzi*. Neither of those cases supports her argument.

62. Both *Pillar-Neumann* and *De Zorzi* were cases in which the court applied the core principle stated in *Wisniewski's* case to their specific circumstances. In each case, those circumstances are clearly to be distinguished from the material facts in the present appeal. In both *Pillar-Neumann* and *De Zorzi*, the requested person was already beyond the jurisdiction when informed of the legal process requiring their return to that jurisdiction. They did not knowingly place themselves beyond that legal process. They simply declined to take the positive step of returning.

63. By clear contrast, in the present case, in mid-February 2015 the Appellant was in Poland and aware of the possibility, if he remained in Poland, of being returned to custody. He had been notified of the consent proceedings. It was in that knowledge that he left Poland and returned to the UK. The Appellant took the positive step of leaving Poland and returning to the UK while the opportunity presented itself to him, in order to escape the prospect of being returned to custody in Poland following the consent proceedings. He was well aware that he faced that prospect before he took the decision to return to the UK.

64. It would have been open to the Appellant to seek the JA's express permission to return to the UK, in order to be present at the hearing of the consent proceedings before Westminster Magistrates' Court in April 2015. Had the JA given permission for him to return to the UK for that purpose, his situation would have been similar to that of the requested person in *De Zorzi's* case. The Appellant, however, did not seek or obtain the permission of the JA to leave the Polish jurisdiction. On his own admission, he left because he knew that the JA could not lawfully prevent him from leaving. He took the opportunity to place himself beyond the reach of the JA, whom he knew had begun the legal process of seeking consent to return him to custody to serve his outstanding prison sentences.

65. For these reasons, I reject the Appellant's contention that the District Judge was wrong to conclude that the Appellant was a fugitive. That conclusion was plainly open to her on the facts of this case and in the light of the Appellant's own evidence.

66. In the light of that conclusion, the Appellant is not able to rely on delay in the conduct of these extradition proceedings, as a ground for holding it to be oppressive now to return him to serve the remaining term of his combined sentence of imprisonment. Had the Appellant remained in Poland, he would have long since served the remainder of that sentence. That he now faces the prospect of being surrendered to Poland in order to do so is due to his own decision to leave the Polish jurisdiction. He knowingly placed himself beyond the reach of the JA, in the knowledge that the JA had applied for consent to enforce his outstanding prison sentences for the AW offences.

Ground 2 – Article 8 of the European Convention of Human Rights

The District Judge's reasons

67. In [58] of the judgment, the District Judge stated her reasons for concluding that ordering the Appellant's extradition to Poland to serve the remainder of his combined sentence would not be a disproportionate interference with his rights under article 8 of the ECHR –

> *"(a) It is very important for the UK to be seen to be upholding its international extradition obligations and Judicial authorities should be afforded a proper degree of mutual trust and confidence. The UK should not be seen as a safe haven for fugitives and the [appellant] is a fugitive.*
>
> *(b) The offending is serious and there is a significant sentence to serve….*
>
> *(c) There has been a significant lapse of time since the offending however, the [appellant] is a fugitive. He left for the UK in 2006 knowing that these matters remained outstanding. He was sought by Poland clearly in relation to both warrants and it is only due to an error that he was only returned on one of them. Of course it would have been preferable if he had been returned on this warrant also and all matters could have been dealt with in 2014 however, there was clearly an error which led to this and having realised that the JA did what they could to have this matter dealt with swiftly. They applied for consent, they obtained consent but in this time the [appellant] had fled to the UK. There is no such delay that impacts the public interest in extradition.*

(d) The [appellant] has a family here. Whilst he is not in a relationship with his ex-partner any longer it is clear that he is still close with her and his children and is a hands on father. In my view, extradition will have more of an emotional impact upon the [appellant's] children than financial. I say this based on the statement from his ex-partner. However, that emotional impact is important. However, when one takes that impact into account alongside his working life here in the UK and the fact that he has no convictions in the UK, it is not enough to establish that extradition would be disproportionate when balanced against the very strong public interest in extradition taking into account the nature of the offences, the sentence remaining to be served and the fact that the [appellant] is a fugitive from justice".

The Appellant's submissions

68. Ms Collins submitted that the District Judge had been wrong to find that ordering extradition of the Appellant will not be a disproportionate interference with the Appellant's right to respect for his private and family life under article 8 of the ECHR.

69. Counsel's submissions focused upon the District Judge's consideration of the question of delay.

70. The AW offences had been committed in 2003 and 2004. The original prison sentences were imposed in 2006. The lengthy period of years between those dates and the arrest of and subsequent extradition proceedings against the Appellant in 2022 had been considerably extended due to the unexplained errors of the JA and the NCA.

71. In [45] of the judgment, the District Judge had accepted that the failure of the JA to take the necessary steps to secure the Appellant's extradition in 2014 to serve his outstanding sentences for all five offences appeared to be an error, but had found that no culpability lay at anyone's door in respect of that error. It was submitted that the District Judge was clearly wrong in that finding. There had been no explanation given for the error. Nor had any explanation been given for the dilatory action of the JA in failing until December 2014, shortly before his release from prison, to make enquires of the NCA as to the basis of the Appellant's surrender. The JA knew or ought to have known in July 2013, when extradition was ordered on the EAW, that the Appellant's surrender at that time was only in relation to offence 5. The JA had offered no proper explanation for have failed to take any steps to obtain consent under article 27 of the Framework Decision until early 2015.

72. Ms Collins submitted that there had been a further substantial period of unexplained delay following the issue of the AW on 5 January 2017. The NCA did not certify the AW until 2 December 2021. There was no explanation in evidence before the District Judge or in this court for that unexplained delay of almost 5 years.

73. It was submitted that these substantial periods of unexplained delay had resulted in the Appellant now facing extradition to serve the remainder of a prison sentence for offences committed almost 20 years ago. The District Judge had been wrong to diminish the significance of that period of delay, in the light of the culpable errors and omissions in 2013-2014 and the period of nearly five years' unexplained delay between issue and certification of the AW. The resulting significant delay, the fact that the Appellant has long since turned his life around in the UK, with no convictions

since he took up residence in this country, and the Appellant's close and supportive relationship with his family, particularly his children, justify the conclusion that his extradition to serve his remaining sentence would be a disproportionate interference with his rights under article 8 of the ECHR. The District Judge was wrong to reach the contrary conclusion.

Discussion and conclusions

74. The approach to be adopted on an appeal to this court in relation to issues of proportionality was considered in Polish Judicial Authority v Celinski [2015] EWHC 1274 (Admin); [2016] 1 WLR 551, at [20]-[24]. At [24] the Divisional Court said –

"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…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".

75. In Pabian v Poland [2024] EWHC 2431 (Admin), Chamberlain J carried out a detailed analysis of the substantial body of case law in which delay had been raised in the context extradition appeals, in support of an argument that it would be disproportionate and so contrary to article 8 of the ECHR to order the requested person's surrender. At [51] Chamberlain J summarised the position as follows –

"*Delay may be relevant to the Article 8 balance in one or both of two ways. As Lady Hale said in HH, inadequately explained delay on the part of the issuing state may cast light on the seriousness attached by that state to the offending in respect of which extradition is sought. Inadequately explained delay on the part of the executing state is unlikely to bear on that issue, but may still be relevant when assessing the weight to be given to any interference with private and/or family life to which extradition gives rise. This is likely to be of particular importance in cases where extradition would disrupt family relationships which have started or significantly developed during the period of delay, but it may also be relevant where the requested person has built up a private life in this country during that period. The weight to be given to the interference is attenuated, but not extinguished, by the fact that the requested person came to this country as a fugitive from justice".*

76. In the present case, the Appellant relies on two periods of delay. The first period arose in July 2013, following the order for the Appellant's extradition to Poland on the EAW to serve his prison sentence for offence 5. The period of delay ran until the issue by the JA of the request for consent on 21 January 2015, a period of some 18 months. The second period of delay ran from the date of issue of the AW in early January 2017 to its certification by the NCA on 2 December 2021, a period of nearly five years.

77. The District Judge saw the first period of delay as having resulted from an error for which nobody was culpable. She went on to say that having realised the error, the JA

did what they could to have the matter dealt with swiftly. In my view, Ms Collins is correct in her submission that this reasoning does not address the lack of any explanation as to why the JA did not raise the question of the second arrest warrant with the British authorities before 5 December 2014. The Appellant's extradition on the EAW had been ordered by Westminster Magistrates' Court on 17 July 2013. He was surrendered to Poland on 12 March 2014. He then went into custody to serve his sentence for offence 5, the single offence for which his extradition had been authorised on the EAW. Whether or not the time it took the JA to raise the matter of the second arrest warrant is to be characterised as culpable delay, there is no evidence to explain why it took the JA 18 months to do so.

78. However, as I have already explained in my earlier analysis of the Appellant's evidence and the District Judge's findings, notification in late January 2015 that the JA would seek to enforce his outstanding prison sentences for his earlier offences came as no surprise to the Appellant. In cross examination he said that it was pretty obvious to assume that the JA would do so. On the evidence, this first period of delay, whether or not it was culpable, had not led the Appellant into any false sense of security as to the prospect of being required to serve his outstanding sentences for the AW offences. It is to be noted that his evidence was that following his release from custody he made an application for his remaining sentences to be amalgamated. There is no evidence to suggest that he was prejudiced in that application, or in his subsequent appeal, as a result of not being notified sooner of the JA's request for consent.

79. Although I do not share the District judge's view that the JA acted swiftly after July 2013 in pursuing their inquiries in relation to the second arrest warrant, I agree with her finding in [58(c)] of the judgment that the first period of delay in 2013 and 2014 is not such as to attenuate the public interest in extradition in this case.

80. The second period of delay between the issue of the AW and its certification is wholly unexplained in the evidence before the District Judge. No explanation has been offered by the Respondent in evidence in response to this appeal. The period of unexplained delay of almost five years is on any view substantial. In the absence of any evidence from the JA or the NCA seeking to explain that lengthy period of delay, I must proceed on the basis that there is no adequate explanation for it.

81. I have carefully considered the District Judge's findings of facts in [45] of the judgment and her assessment in [56]-[58] of the proportionality balance under article 8 of the ECHR. I am not able to find in the judgment any assessment by the District Judge of that second, more substantial period of delay. I must therefore address the impact of that second period of delay and retake the balancing exercise myself.

82. The significance of that period of delay in the context of the Article 8 balance lies in the evaluation of how the Appellant's private and family life developed during its currency. The District Judge fairly and accurately summarised the Appellant's family circumstances in [58(d)] of the judgment. The Appellant has a close relationship with his former partner and their three children. His extradition will have an emotional impact on his children, which is important. Although the financial impact on his family may be more limited, it should not be dismissed as insignificant. I add to that analysis the unchallenged evidence of his former partner that the emotional impact on his youngest child is likely to be particularly strong. I also have in mind that the

financial impact may well affect the children's ability to pursue their wider interests, which also carries some weight.

83. The evidence shows that his family life is stable and his children thriving as a result of the supportive home environment provided by both their parents. That stable family life will undoubtedly have deepened as the years passed following the Appellant's return to the UK in mid-February 2015 and during the subsequent period of years until December 2021. During that period, the Appellant's relationship with his former partner and his three children will have resumed a normal routine. The same is true of his working life. These matters weigh significantly in the proportionality balance against extradition.

84. The AW offences, although committed 20 years ago, were serious offences. Their seriousness is reflected in the decision of the Polish appeal court in February 2016 to uphold a combined sentence of 3 years' imprisonment. The remaining sentence to be served is, moreover, for a substantial period of about one year and nine months' imprisonment.

85. The Appellant is a fugitive. In my view, it is clear from his evidence at his extradition hearing that he fully recognised the resulting precariousness of his private and family life in the UK. In [44] of the judgment, the District Judge records his evidence in answer to questions in cross examination. He said that he had been aware that following his unsuccessful appeal, the combined sentence of 3 years' imprisonment had been upheld and *"from that day they would have to serve the balance of the sentence from those three offences"*. In answer to the suggestion that he knew that he was required to return to Poland to serve the remainder of his combined sentence, the Appellant said *"I was here I wasn't going to go back I was here with my family"*.

86. There is a strong public interest in discouraging persons seeing the UK as a state willing to accept fugitives for justice: see *Celinski* at [9]. In my view, the Appellant has been quite candid in his evidence that, following his release in January 2015, he has both understood and accepted that he is liable to serve the remainder of his outstanding sentences in Poland. He knew from late January 2015 that the JA had begun the legal process to enforce his surrender for that purpose. He himself took legal action to reduce the length of his remaining term of imprisonment. He left Poland while he was free to do so, so as to place himself beyond the reach of the JA. As he put it in response to cross examination *"if they find me they will find me"*.

87. I shall now draw the overall balance.

88. The unexplained delay on the part of the executing state is a factor of significance in this case. It is reasonable to infer from the evidence both of the Appellant and his former partner that it has resulted in a greater degree of interference with the Appellant's private and family life than would have been the case, had certification occurred in a timely way and his extradition proceedings been held much sooner after the issue of the AW in early 2017. A particular consequence of that delay is greater harm and disruption to the Appellant's family life, through loss of stability and the emotional impact on his three children.

89. However, for the reasons I have given, the public interest in extradition in this case, although attenuated to a significant degree by those considerations, remains strong.

The Appellant left Poland in early 2015 in the expectation that he would be required to serve the remainder of his prison sentences imposed for the AW offences. These were serious offences. He returned to the UK to resume his family life here, but in the knowledge that the JA had already begun the legal process to enforce his return to Poland where he would be returned to custody. He began legal proceedings with a view to reducing the overall length of the remaining term of imprisonment which he would be required to serve.

90. In my judgment, the public interest in the Appellant's extradition prevails in this case. I conclude that it would not be a disproportionate interference with his rights protected under article 8 of the ECHR to order his surrender to the JA on the AW to serve the remaining term of his prison sentence. In concluding that extradition of the Appellant would not constitute a disproportionate interference with the Appellant and his family's rights protected under article 8 of the ECHR, the District Judge reached the right decision.

Disposal

91. For the reasons I have given, I have not been persuaded that the District Judge ought to have decided the questions before her at the extradition hearing in this case differently. Neither ground of appeal has been made out. Accordingly, I must dismiss this appeal.