Neutral Citation Number: [2024] EWHC 2431 (Admin)

Case No: AC-2023-LON-002124

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/09/2024

Before :

MR JUSTICE CHAMBERLAIN

- -

Between :

GRZEGORZ PABIAN	**Appellant**
- and -	
CIRCUIT COURT IN WARSZAWA, POLAND	**Respondent**

- -
- -

Jake Taylor (instructed by **Sperrin Law**) for the **Appellant**
Laura Herbert (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date: 25 June 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 25 September 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain :

Introduction

1 The appellant, Grzegorz Pabian, is sought by Poland pursuant to two European arrest warrants certified by the National Crime agency on 14 July 2022. The warrants seek the appellant's surrender to serve sentences imposed by courts in Warsaw. The appeal is against the decision of District Judge Callaway to order the appellant's extradition to Poland. The decision was handed down on 5 July 2023 after a hearing on 17 May 2023 at Westminster Magistrates' Court. Permission to appeal was granted on 31 October 2023 by Sir Duncan Ouseley, sitting as a High Court Judge.

2 The hearing of the appeal took place on 25 June 2024. At the hearing, I permitted the respondent to file further evidence and/or written submissions in relation to the delay in certifying the warrants. The appellant filed further submissions on 2 August 2024 and the respondent filed submissions dated 8 August 2024, together with evidence.

The first warrant

3 The first warrant relates to an offence of fraud committed at a shop in 2011 with a total value of £562, resulting in a sentence of imprisonment for 1 year, of which 8 months and 26 days remain to be served.

4 Further information supplied by the Polish judicial authority confirms that the appellant was detained on 14 January 2011. He was arraigned, interrogated and advised of his rights and duties, the latter including informing the authorities of any change of address. When the charges were amended, he was interrogated again and admitted the charges. Prosecutors invited the court to impose a sentence of 1 year's imprisonment, suspended for 3 years, together with a fine. Notice of the hearing was sent to his registered address, but he had moved out without informing the authorities of his new address. On 3 November 2011, the Warsaw District Court found him guilty in his absence and imposed the suspended sentence which the prosecution had sought. On 14 November 2011 the appellant informed the authorities of his change of address and on 24 January 2012 that court sent him a copy of the judgment against him.

5 By that time, the appellant had committed a further offence, robbery, for which he was later convicted by the Warsaw District Court on 29 November 2012. There was a hearing on 27 June 2013 at which the appellant was present and at which the court activated the 1-year suspended sentence for the earlier offences. There was then a further hearing on 23 July 2015 at which the appellant was granted early release with probation, subject to conditions that he remain under supervision and abstain from alcohol. He then left Poland for the UK, which meant that he could not comply with the supervision condition. He should have requested permission from the court to travel abroad and, if the permission had been granted, he should have maintained regular contact with his probation officer by phone or email. The Polish authorities must have known that he was in the UK because the warrant records that on 5 April 2016 he was convicted at Snaresbrook Crown Court for "drug trafficking".

6 In fact, the offence of which the appellant was convicted at Snaresbrook Crown Court was an offence of possessing, rather than supplying, a small quantity of cocaine.

7 Accordingly, on 22 March 2017, the Circuit Court at Torun revoked the conditional release and activated the unserved part of the 1 year suspended sentence. He was required to surrender to custody on 4 May 2017 but did not. On 28 May 2018, a European arrest warrant was issued by the Warsaw Circuit Court.

The second warrant

8 The second warrant relates to four offences committed in 2011 and 2012: stealing items to a value of £276 from a train; two offences of making unauthorised transactions using another person's debit card, to a total value of about £120; and stealing a bag and wallet to a total value of about £100.

9 The appellant appeared before the court, where he pleaded guilty to these offences and provided an address. The sentence was 1 year and 4 months, suspended for 3 years, together with a fine. The judgment became final on 16 July 2013. In a letter dated 15 December 2015 sent from his then address in the United Kingdom, he asked to pay his fine in instalments.

10 In the light of his conviction at Snaresbrook Crown Court, which the Polish court considered to be for a similar crime committed during the currency of his probation period, the latter court activated the suspended sentence at a hearing of which the appellant had been notified but which he did not attend. The appellant was summoned to surrender to custody on 4 January 2017 but did not, because by that time he was in the UK. Following a police search for the appellant, European arrest warrant was issued on 13 June 2018.

The extradition hearing

11 At the extradition hearing the appellant relied on two bars: first, that extradition would be unjust or oppressive and so contrary to s. 25 of the Extradition Act 2003 ("the 2003 Act"); second, that his physical or mental health condition was such that extradition would be incompatible with his right to respect for his private and family life under Article 8 ECHR and so contrary to s. 21 of the 2003 Act.

12 The appellant relied on his own evidence and a report from a consultant psychiatrist, Dr Galappathie, dated 28 December 2022. The District Judge noted as follows in his judgment:

> "17. The 1st proof of evidence filed by the RP sets out in some detail various difficulties experienced by the RP at various stages of his life and in particular when he was deported from the US in 2008 back to Poland. He explains that his entire family were resident in the US and he was alone and struggling to get by. He describes having severe ADHD as a child and his education began to suffer. The taking of medication by the RP is described as being intermittent and that when he did not have recourse to medication he complains as being overwhelmed.

> 18. As to his time in the UK he describes as being registered with a GP in Leytonstone and is in receipt of medication. At this stage in his life he states that he can finally see some future for himself in that he has a settled address and good access to medication."

13 Dr Galappathie diagnosed the appellant as suffering from recurrent depressive disorder with possible features of rapid cycling bipolar disorder and attention deficit hyperactivity disorder (ADHD). His evidence was that, if extradited, the appellant would be likely to suffer a substantial deterioration in his mental health: in particular, worsening depression, anxiety, ADHD symptoms and suicidal thoughts.

14 In response to questions on behalf of the judicial authority and from the District Judge, Dr Galappathie said that he had seen the appellant for one hour and was satisfied that this was sufficient to offer the view contained in his report. GP records confirmed that the appellant's condition was stable between 2018 and 2022. There was no history of depression before the start of the extradition proceedings, but there was a history of anxiety. He accepted that the appellant was on medication for ADHD at the time when he wrote his report and that medication can be given in custody for depression.

The District Judge's judgment

15 The District Judge noted that there was a "direct interface" between the two bars to extradition relied upon. He set out the law on s. 25, noting that the threshold for oppression was high. He summarised the conclusions of Dr Galappathie and said this:

> "23. Persons who appear before these courts and faced with extradition applications or indeed other criminal processes invariably display difficulties with their mental health and having varying degrees of seriousness. In other words such matters are not uncommon. Naturally, for any person to be made the subject of social upheaval and removed from where they are settled and have improved the circumstances of their former life is bound to be disturbing as unwelcome and affective as to any mental health condition. The RP in this case is in no different position to any other person having a similar background.
>
> 24. I have already made comment and referred to the fact that in law that the threshold so to refuse this application is a high one, and the question which arises I define as follows: whether the evidence, both personal and medical, is such that the court should find that it would be oppressive to order the extradition sought?
>
> 25. Having considered the matter with case and the careful submissions advanced by both sides to this case I have concluded that the threshold to refuse extradition has not been met. I make the following observations:

> (i) Dr Galappathie diagnoses 'moderate depression' in the case of the RP and not 'severe depression'.
>
> (ii) Depression of the kind experienced by this RP is not uncommon, and in the event that extradition were to take place the JA are well placed to deal with such medical issues as they arise. This point was within the contemplation of Ouseley J in the case of Mikolacyck [sc. Mikolajczyk], already the subject of reference.
>
> (iii) The RP, perhaps as a consequence of his own resource, is in a much better position than he once was in terms of his own medical health and is in a settled state.
>
> 26. Accordingly I find that the s.25 head of challenge must fail."

16 In relation to Article 8, the District Judge noted that the offences, while not "the most serious", had nonetheless resulted in prison sentences for "repeat offending" and the appellant had committed a further offence in this jurisdiction. Much of the responsibility for the delay between the offending and the execution of the warrants lay with the appellant, who was a fugitive.

17 The District Judge directed himself as to test to be applied in Article 8 cases, as enunciated by the Supreme Court in *HH v Italy* [2012] UKSC 25; [2013] 1 AC 338. He went on to perform the balancing exercise required by the Divisional Court in *Celinski v Poland* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551. Under the heading "Discussion", he said this:

> "30. Comment is made on behalf of the RP that the offences stretch back in time as the warrants indicate. However, it must also be factored that much of the responsibility for this fact rests with the RP. It is unchallenged that he is a fugitive and provided an incorrect address to the authorities thereby obstructing service of relevant documentation. The law is clear that a RP cannot rely upon delay whereby it is argued that it would be oppressive or unjust to return the subject (see Kakis v Govt. of the Republic of Cyprus [1978] 1 WLR 779).
>
> 31. The offences themselves, whilst not being of the most serious, have resulted in a prison sentence in this JA, are examples of repeat offending and the RP has committed a further offence in this jurisdiction the fact of which revealed his location and residential circumstances.
>
> 32. I am obliged to conduct a *Celinski* analysis to the facts of this matter and to this I shall now turn.
>
> Factors against Extradition

> (i) the RP has a history of mental illness the fact of which has been updated by his own medical expert. It is stated that it would be 'devastating' to his continued better mental health were he to be extradited.
>
> (ii) the RP is settled for the first time in the UK, has a landlady and assists with household chores and tasks.
>
> (iii) the RP expresses a wish to work in the UK and to lead a worthwhile life.
>
> Factors in favour of Extradition
>
> (i) the weighty public interest in the UK adhering to treaty obligations.
>
> (ii) the weighty public interest in ensuring that the UK does not become a safe haven for criminals.
>
> (iii) the RP is a fugitive and has an extensive criminal record within the JA and the UK.
>
> (iv) the RP has limited community ties within the UK and no dependent family resident in the UK.
>
> (v) the mental health of the RP has been identified as being of 'moderate' severity and is well within the compass of this JA to identify and to treat."

18 At [33] he said that it was not possible to conclude that the public interest in extradition is outweighed by Article 8 considerations and that the challenge accordingly failed.

The grant of permission to appeal

19 Permission to appeal was sought on the ground that the judge ought to have decided that extradition was barred under both s. 25 and s. 21. In granting permission to appeal, Sir Duncan Ouseley said this:

> "What for me tips the scales into arguability here is not the evidence, as such, of Dr Galappathie, which was not rejected, but accepted and applied at face value (he accepted that despite an expected substantial deterioration in the Appellant's mental health, his condition would not be uncommon in prison and was treatable) nor the lapse of time, as such, between offence and extradition (since the Appellant was a fugitive). Extradition could not pass the oppression threshold, but as I am granting permission on the Article 8 point and the ground covered is the same I am not refusing permission for oppression to be argued.
>
> It is the relatively short amount of time left to serve, 3 months 28 days on AW2, and 8 months 26 days on AW1, when he has now served 1 year on AW2 and 3 months on AW1, coupled

> with the fact that the activation of the suspended sentences was brought about by an offence of 'drug trafficking' in the UK, when the offence was for a small amount of simple possession of cocaine… it is not clear that the sentences would have been activated for a small case of simple possession. Standing back and taken with the deterioration in mental health, and giving some modest weight to the passage of time, because of the degree of recovery which has occurred during it, it is arguable that, overall, the decision was wrong."

20 Sir Duncan Ouseley was mistaken about the time left to serve under the second warrant, which is 1 year, 3 months and 28 days, not just 3 months and 28 days.

The further evidence from Dr Galappathie

21 The appellant seeks to rely on a further report from Dr Galappathie dated 17 January 2024, which confirms the diagnosis of recurrent depression, the current episode moderate, without psychotic symptoms, but with high levels of agitation and distress. The appellant had stopped taking his ADHD medication and there had been a deterioration in his mental state. He was more hyperactive than when previously assessed. He said this at para. 49 of his report:

> "He is likely to suffer from a substantial deterioration in mental health. Mr Pabian continues to have a subjective fear of being returned to Poland. He does not want to return to Poland and complete the remainder of his prison sentence. It is likely that if he were to be removed to Poland and placed within custody, his mental health would worsen. He is likely to suffer from worsening depression, anxiety and ADHD symptoms if returned. His depression is likely to deteriorate leading to worsening low mood, difficulty sleeping, low energy levels, tiredness, despondency, low self-esteem, worsening concentration and memory problems, may suffer from a recurrence of suicidal thoughts and would then present with a high risk that he will act upon his thoughts about suicide and potentially attempt to end his life. He has previously had thoughts about trying to commit suicide by hanging. His ADHD is also likely to significantly worsened, especially if he feels distressed".

22 Dr Galappathie said this about the measures that could be taken to mitigate the risks if the appellant were extradited to Poland:

> "54. In my opinion, treatment of his depression with antidepressant medication and medication for ADHD would help his mental state to improve and this would help reduce his risks on return. If he is to be extradited, then liaison with medical services within prison so that they are aware of his medical issues and risks to enable care plans to be developed would help manage his risks. If he has access to treatment on return to Poland this would also help mitigate his risk of

> deterioration in mental state and help manage his risk of self-harm and suicide. If he is placed within pre-removal detention, he can be placed on an ACCT plan in prison or ACDT plan in a detention centre or a level of observation can be applied to monitor and manage his risk of self-harm and suicide. If he requires restraint as part of the removal process this would be distressing for him and could worsen his mental state. Whilst experienced escorts and healthcare professionals could be provided on the extradition flight he could still potentially self-harm or attempt to commit suicide during the flight or on arrival in Poland.
>
> 55. Whilst the above measures can be put in place to try and mitigate his risk of deterioration in mental state and risk of self-harm and suicide upon return, my opinion remains that his fear of being extradited, which may be subjective and not objectively well founded, which is an issue for the court to determine, would still cause a deterioration in his already fragile mental state and increase his risk of self-harm and suicide."

Submissions at the hearing

23 Jake Taylor for the appellant submitted that the District Judge had erred in failing to attach weight to the appellant's history of mental illness and the unchallenged evidence as to the effect that extradition was likely to have on his mental condition. Dr Galappathie's recent report provided further evidence of these likely effects.

24 In addition, a number of factors tending against extradition were not properly acknowledged: the fact that the offences took place some 12 years before the extradition hearing; the substantial delay since the offences (even though the appellant is a fugitive from justice); the fact that his suspended sentences were activated on the incorrect footing that the appellant had been convicted of trafficking, rather than simply possessing, controlled drugs (which was itself a significant injustice); the fact that the appellant presents a real risk of suicide, which risk would be increased if he were to be extradited; the fact that the appellant had built a stable life in the UK, where he was accessing and benefitting from healthcare and has the support of his landlady, who gave unchallenged evidence before the District Judge and to whom he provides emotional and practical support; that he has only one minor conviction since he moved to the UK; and that the offences were of relatively low value.

25 Laura Herbert for the respondent submitted that the evidence of Dr Galappathie before the District Judge fell well short of what was needed to surmount the high threshold for oppression. The evidence was not that the appellant posed a substantial risk of suicide, but rather that the appellant "may suffer" a recurrence of suicidal thoughts, though none were reported at the time of the report. There was nothing to indicate that there was a substantial risk of suicide and in any event nothing to indicate that there was any condition which removed the capacity to resist the impulse to commit suicide: see *Turner v USA* [2012] EWHC 2426 (Admin), [28]. The District Judge property noted that a diagnosis of depression was not unusual. The depression in this case was

moderate, not severe. In any event, there was medication that could be given, both for the depression and for the ADHD.

26 As to Article 8, the appellant's mental health difficulties were taken into account by the District Judge. There is nothing in the further report which would require the balancing exercise to be undertaken again. The complaints pursued on appeal are in reality complaints about weight, which are outside the scope of the court's appellate jurisdiction. The District Judge properly took into account the fact that the appellant is a fugitive, as he accepts. Overall, the District Judge was entitled to balance the factors for and against extradition in the way he did.

Evidence about the delay in certifying the warrants

27 The evidence from the Polish judicial authority establishes as follows. The European arrest warrants were issued in May 2018 (first warrant) and June 2018 (second warrant) and were registered by the Polish authorities on the Schengen Information System ("SIS"), administered by the UK's SIRENE bureau. Correspondence from the judicial authority to Interpol indicated a mailing address in the United Kingdom. This information came from the records of the Polish district court with which the appellant had corresponded.

28 The NCA's evidence establishes as follows. Due to the loss of access to the SIS database following the UK's exit from the EU, the NCA is unable to confirm whether a SIRENE case was in existence for the appellant and unable to confirm whether, if so, any action was taken on it between 2015 and 2020. The INTERPOL case was created following a request from the NCA's operational team for the warrant from Poland on 31 March 2022. This followed a direct request from a Polish contact in the foreign law enforcement community. The European arrest warrant was requested from INTERPOL Warsaw on 5 May 2022.

Submissions on the delay in certifying the warrants

29 Mr Taylor for the appellant submitted that a requested person has a right under Article LAW.SURR.95(1) of the Trade and Cooperation Agreement to have applications for arrest warrants "dealt with as a matter of urgency". He relied on a series of decisions of Collins J showing that delay could weigh against extradition even where the requested person was a fugitive: *Juszczak v Poland* [2013] EWHC 526 (Admin), at [13]-[15]; *Tomasziewicz v Poland* [2013] EWHC 3670 (Admin), [16]-[17]; and *Miller v Poland* [2016] EWHC 2568, [5], where a delay of 3½ years in serving the arrest warrant and putting in train the extradition was "nothing short of disgraceful" and "inexcusable". See also *Oreszczynski v Poland* [2014] EWHC 4346 (Admin) and *Zimackis v Latvia* [2017] EWHC 315 (Admin), [25]-[26].

30 Ms Herbert for the respondent accepted that delay since offences were committed can diminish the public interest in extradition: *HH*, [8]. However, she submitted that the authorities relied upon by the appellant had been superseded by later authority, in particular *RT v Poland* [2017] EWHC 1978 (Admin). She relied also on *Wanagiel v Poland* [2018] EWHC 3370 (Admin). The same approach was followed by Choudhury J in *Cis v Poland* [2022] EWHC 980 (Admin). On the facts, there had been no culpable delay by Poland in issuing European arrest warrants in 2018, following the decisions to revoke the appellant's conditional release in 2017. Although those authorities had

information that he had been in the UK in December 2015, they had no current information as to his whereabouts. As he accepts, he did not live a stable lifestyle for many years. In those circumstances, the District Judge was correct to say that, as a fugitive, the appellant could not pray in aid the delay in certifying the warrants.

Discussion

31 It is convenient to deal with Article 8 first and then oppression.

Article 8

The evolution of the case law on delay under Article 8

32 In *HH (Italy),* at [8], Lady Hale held that delay on the part of the authorities was relevant to the question whether extradition was compatible with Article 8, whether the delay was attributable to the issuing or executing state. At [46], when addressing F-K, a Polish case joined with HH's, she made clear that this was so even in a case where the appellant was a fugitive. This was because, whatever the reasons for it, a lack of urgency in bringing the requested person to justice was some indication of the importance attached by the authorities to the offending. Delay was particularly relevant in a case where in the intervening period the appellant had made a "new, useful and blameless life" in the UK without any reason to believe that the authorities of the requesting state were seeking his or her return: [47]. As respects F-K's case, the other members of the Supreme Court agreed with Lady Hale.

33 In a series of subsequent cases, Article 8 appeals were allowed in part on the ground of delay by the NCA in certifying warrants, even where the appellant was a fugitive from justice, often in cases where there had also been significant delay by the requesting state in issuing the European arrest warrant.

34 In *Juszczak*, the appellant was a fugitive from justice: see [12]. There was significant delay by the Polish authorities in issuing the warrant and then further unexplained delay of 3½ years by the NCA in certifying it. Collins J considered the NCA's delay to be particularly unacceptable: see [13]-[14]. The appeal was allowed on Article 8 grounds: [18]-[19].

35 Similarly, in *Tomasziewicz*, there were delays both by the Polish authorities in issuing the European arrest warrant and by the UK authorities in certifying it. As to the latter, Collins J said this at [8]:

> "The European arrest warrant was, it seems, issued in July 2007. However, it was not certified by SOCA in this country until 2012, so it took some five years for SOCA to get around to pursuing it. No explanation has been given for that five-year delay, save that it was the practice of SOCA, I am told, not to take steps to deal with a warrant until they had information as to the whereabouts of the individual in this country. Since he had signed on for the Home Office up until 2004, and there is no reason to doubt that he had been working here since, it is a little difficult to follow why SOCA found it so difficult to locate him in this country. Certainly there seems little excuse

> for that substantial delay. I appreciate of course that it is not a matter which is the fault of the prosecuting authority of Poland, nonetheless it is a substantial delay which must affect the proportionality of return in a case such as this."

Collins J said at [17]-[18] that, taking account of the substantial delay, extradition would be disproportionate even though the appellant was a fugitive, at least in relation to one of the matters for which he was sought.

36 In *Wolack v Poland* [2014] EWHC 2278 (Admin), where the Article 8 appeal failed, Collins J sounded a note of caution, saying this at [9]:

> "It is, in my judgment, quite wrong for this court to assume culpability in any delay unless it is so excessive or there are factors which indicate that it really was not reasonable for the authority to fail to issue a warrant earlier than it did. Furthermore, even when a warrant is issued, it may take time for it to be appreciated where the appellant precisely is in this jurisdiction. It is all very well to say it should not have been difficult to find him but one must also bear in mind that there are priorities that have to be adopted by the authorities here."

37 But in *Oreszcyynski* [2014] EWHC 4346 (Admin), where the appellant was a fugitive, the NCA received a European arrest warrant in November 2010 and made an initial attempt to trace the appellant through an NHS database, but did not follow up when their initial enquiries received no response: see [4]-[5]. No checks were made with the Home Office, even though the appellant was registered with them. Blake J allowed the Article 8 appeal, saying this:

> "9… I have no hesitation in reaching the conclusion that the failure to make *any* inquiries of the appellant's whereabouts after 15 November 2010, let alone inquiries with one of the most obvious ports of call, the Home Office that deals with foreign national generally and Polish workers in particular at that time, is astonishing…
>
> 10. I am unimpressed with the submission that there is no statutory duty on the NCA to investigate the possible whereabouts of the fugitive. On that submission an EAW could gather dust over the decades unless and until the happenstance of a police encounter were to incur. A delay in taking reasonable steps to execute an EAW engages issues of human rights."

38 In *Miller*, an Article 8 appeal also succeeded. The appellant was a fugitive who had come to the UK to avoid serving a sentence of just over 18 months' imprisonment for supplying cannabis between 2001 and 2003: see [1] and [3]. A European arrest warrant was issued in 2009. The NCA (or its predecessor) did not certify it until 2012 and then took over three years to execute it. When granting permission, the judge said that the NCA needed to account for the delay. They provided no evidence on this: see [4]. It was in that context that Collins J described the 6-year delay as "nothing short of

disgraceful" and "inexcusable". In that period, the appellant had consolidated his life in this country. At [7], he added:

> "This appellant was properly regarded as a fugitive. So far as any delay in Poland is concerned, that would weigh little in his favour in considering his Article 8 claim. But the situation is somewhat different when one considers delay by the NCA or its predecessor. The fact that he was a fugitive, of course, is material but it is not a matter which can weigh so heavily against him when one is considering delay which ought not to have occurred but which was not the responsibility of the requesting state. It was solely the responsibility, and resulted from what appears to be the disgraceful incompetence, of those responsible."

39 In *Cieczka v Poland* [2016] EWHC 3399 (Admin), there was a six year delay in certifying European arrest warrants: see [3]. The appellant was a fugitive, but the Polish authorities knew from an early stage that he was in the UK. Mitting J regarded the fact of the delay as "highly relevant", as was the fact that it was unexplained. The Article 8 appeal succeeded.

40 In *Zimackis*, Garnham J allowed an appeal on Article 8 grounds in a case where the appellant was a fugitive. He said this:

> "25… it seems to me right to acknowledge that the court should be slow to criticise the NCA given the competing burdens that fall on that organisation. Nonetheless, it is evident that prior to the UK's accession to the SIRENE arrangements, the NCA's approach to responding to receipt of EAWs depended on their being notified, by one means or another, of the presence of the subject of the EAW in this country. In this case, an enquiry of the Home Office would have revealed that the appellant was living in Yorkshire. An enquiry of the Department for Work and Pensions would have had a similar effect.
>
> 26. It is not necessary for me to decide whether or not the NCA are culpable on the facts of this case, but it is material for me to observe and conclude, as I do, that it would have been possible for the British authorities to have discovered the appellant's presence in this country, had a simple enquiry been made of the department responsible for the presence of Latvian nationals at the time in the UK."

41 However, in *RT*, where the Article 8 appeal failed, the Divisional Court took an approach which, on its face, appears different. The appellant had been sentenced to three years' imprisonment for a violent robbery, of which 2 years and 10 months remained to be served. He failed to surrender to custody and a domestic arrest warrant was issued in 2005. It was another four years before a European arrest warrant was issued, in November 2009. At that time, the NCA's predecessor had no information suggesting he was in the UK, although he had made an application to the Home Office. In November 2013, intelligence was received by the NCA from Poland that the

appellant was living and working in the UK. The warrant was certified in the same month and issued a few days later to the local police force. The appellant was not arrested until two and a half years later, though there was evidence that the police had been looking for him two years before that and he had spent nights away from home as a result: see [10]-[11]. At [62], Burnett LJ and Ouseley J said this:

> "It is a frequent submission that someone has been living in the United Kingdom openly, often having had contact with various official bodies here. But 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. In this case, it is true that the local police took a long time to arrest the appellant, although as we have noted the evidence suggests they had tried earlier and the appellant was taking steps to avoid them."

42 In *Wanagiel*, another fugitive case where there was a delay of nine years between the issue of the European arrest warrant and its certification by the NCA, the appeal also failed. At [8], Ouseley J cited a well-known passage from *Gomez v Trinidad & Tobago* [2009] UKHL 21, [2009] 1 WLR 1038, in which Lord Brown said this at [26]:

> "If an accused… deliberately flees the jurisdiction in which he has been bailed to appear, it simply does not lie in his mouth to suggest that the requesting state should share responsibility for the ensuing delay in bringing him to justice because of some subsequent supposed fault on their part, whether this be, as in his case, losing the file, or dilatoriness, or, as will often be the case, mere inaction through pressure of work and limited resources. We would not regard any of these circumstances as breaking the chain of causation (if this be the relevant concept) with regard to the effects of the accused's own conduct."

At [9] of his judgment in *Wanagiel*, Ouseley J said the passage quoted at [41] above from *RT* and at [10] said this:

> "It does not lie in the mouth of a person who has fled a jurisdiction which had properly, as he knew, sentenced him to imprisonment, and required him to serve it, to say further that it was an obligation on the UK or Polish authorities to find him, when he had made no contact with them. It is not for them to search around amongst the various UK authorities that might have revealed exactly where he was in order to arrest him. The obligation is on the person, who is the fugitive, to tell the Polish judicial authorities exactly where he is."

43 In *Cis*, the Article 8 appeal also failed. Choudhury J distinguished *Oreszczynski* on the ground that in that case no inquiries were made as to the appellant's whereabouts for a number of years. He distinguished *Cieczka* because in that case (contrary to the finding of the district judge) there was evidence that the Polish authorities knew the appellant was in the UK. He cited the above passages from *Wanagiel* and *RT*. On the facts, there was no failure to take obvious steps. However, Choudhury J concluded at [24]:

> "it does not lie in the mouth of a fugitive who has evaded justice in his home country to blame authorities for not finding him in the meantime. Although the appellant lived an open life in the UK, the one step he did not take, having become a fugitive, was to inform the Polish authorities directly of his whereabouts. In fact, as is noted in the social worker's report, having left Poland to escape his sentence the appellant never travelled back to Poland for fear of being arrested."

The principles that emerge from the case law

44 It has been said that, as long as the general principles are understood, it is generally unnecessary to cite decisions of single judges in Article 8 appeals: see e.g. *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551, [14(iii)]. This reflects the fact-sensitive nature of the Article 8 balancing exercise. The facts of one case are never the same as those of another. Even if they were, the chief relevance of previous decisions lies in the principles they establish, not in the application of those principles to particular facts. In this area the principles are for the most part adequately set out in the decisions of the Supreme Court in set out in *Norris v USA* [2010] UKSC 9, [2010] 2 AC 487 and *HH* and of the Divisional Court in *Celinski*.

45 As I have said before, however, this point should not be elevated into a hard rule: see e.g. *Killoran v Belgium* [2021] EWHC 1257 (Admin), [56]. Previous decisions, including those of single judges, can sometimes be helpful in identifying a principle or direction of travel governing the approach to a particular issue. The proper approach to delay in cases where the appellant is a fugitive is one such issue.

46 On a quick review of the case law, it would be tempting to agree with Ms Herbert's submission for the respondent that the Divisional Court's decision in *RT* marked a step change in the approach to this issue. But a careful reading of the judgment in *RT*, and subsequent decisions citing and applying it, shows that the position is somewhat more nuanced than that.

47 Before identifying the key principles, it is necessary to say something about the practical working arrangements of the system of judicial cooperation established by Framework Decision 2002/584/JHA, which established the European arrest warrant. Often, the judicial authority of the issuing state does not know in which Member State the requested person is located. In such cases, an alert is issued using SIS, which is now available to all EU Member States. When an alert is entered on to SIS, a copy of the warrant in the official language of the issuing state must be attached. Translations can also be attached but are not required. The data on SIS is managed by a national system known as SIRENE. There is a SIRENE bureau in each Member State. Once an individual the subject of an alert on SIS is arrested, the issuing state must send a translated copy of the warrant to the executing state. Since the UK's exit from the EU, it has lost access to SIS. In cases where the issuing state knows the Member State in which the requested person is located, it generally sends the warrant directly to the judicial authority of the executing Member State, accompanied by a translation into the official language of that state.

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.

49 It is important, however, to note that, in the Divisional Court's reasoning in *RT*, what the issuing state could not be expected to do was make enquiries "to discover whether someone is in this country". As the careful analysis of Choudhury J in *Cis* makes clear, the position may be different where the authorities of the issuing state know that the requested person is in this country, as in *Cieczka*. In such a case, there is a step which those authorities could be expected to take, namely, make a direct request to the authorities here. There may, of course, be an explanation why that step was not taken. If so, the authorities in the issuing state should be prepared to give it. If no satisfactory explanation is given, the UK court is likely to assume that there is none. This is a factor that can be relevant to the Article 8 balancing exercise.

50 Once the UK authorities have received a direct request, a question may arise as to the significance to be attached to any subsequent delay between the receipt of the request and the arrest of the requested person. The court is unlikely to be impressed with a complaint made by a requested person who has taken steps to evade arrest or hide his location in the UK, as had the appellant in *RT*. Furthermore, as was recognised in *Wolack* and *Zimackis*, the court must be realistic about the resource constraints operating on the NCA and on UK police forces. But a long delay can properly be weighed in the Article 8 balance in cases where it would have been easy to locate the requested person and the UK authorities have failed to take even the most minimal steps to do so. Where there has been a long delay between a direct request from the authorities of the issuing state and the execution of the warrant in the UK, the NCA should be prepared to give at least a brief explanation of any steps taken to execute the warrant. If no such explanation is given, the court may assume that there is none. This too is a factor which may be of relevance to the Article 8 balancing exercise.

51 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.

The delay in this case

52 The evidence discloses two periods of delay. The first was between the appellant's failure to surrender to custody following the activation of his suspended sentences and the issue of the European arrest warrants. This delay was just over one year for the first warrant and just over eighteen months for the second. Ms Herbert submitted that, given the finding that the appellant was a fugitive, the Polish authorities were entitled to search for the appellant in Poland before issuing a European arrest warrant. The difficulty with this is that, as the respondent's evidence confirms, the appellant had corresponded with the court from an address in the UK; and the appellant's conviction for possession of class A drugs at Snaresbrook Crown Court was the reason why the suspended sentence was activated. In those circumstances, the respondent has not shown that the delays in issuing the two European arrest warrants were justifiable. That said, these delays were not particularly substantial in comparison with the norm in extradition cases.

53 The delay between the issuing and the certification of the warrants, by contrast, was more than 4 years. This was undoubtedly substantial. Unfortunately, the evidence does not adequately explain it. The lack of an adequate explanation cannot be excused purely by reference to the UK's exit from the EU and the consequent loss of access to SIS. The respondent could have given evidence about when the warrants were registered on SIS and about whether and when any direct approach was made to the UK authorities. If no such approach was made, there is nothing to indicate why not, given that the Polish authorities had corresponded with the Appellant at an address in the UK and knew of the conviction at Snaresbrook. Equally, the NCA could have given evidence from its own records to explain what action (if any) it took between 2015 and 2020 or, if it took no such action, why not. The termination of the UK's access to SIS does not excuse the absence of evidence on these matters. Having been given no adequate explanation, I must assume that there is none; and that steps that could have been taken by either the Polish authorities or the NCA or both were not taken.

The District Judge's balancing exercise

54 Reading [30]-[32] of the District Judge's judgment as a whole, it does not appear that the delay by the respondent and/or the NCA was properly taken into account in the balancing exercise. This may be because the District Judge considered that it was irrelevant in any case where the appellant was a fugitive or because he attached weight to the fact that the appellant no longer resided at the address from which he had corresponded with the Polish court. If the former, this in my judgment was an error of law. If the latter, the conviction at Snaresbrook postdated the correspondence with the Polish court and, as the District Judge said, this "revealed his location and residential circumstances", so a question did arise as to why it took so long for action to be taken to issue and then execute the warrant. Either way, the balancing exercise falls to be retaken by me.

The fresh Article 8 balancing exercise

55 Despite my concerns about the delay in this case, I have nonetheless concluded that extradition would not be disproportionate. The main significance of the delay is that it delineates the period upon which it is necessary to focus in evaluating any private or

family life interests which may have developed. In this case, there is no evidence of any relevant family life. The appellant's friendship with his landlady is relevant as a relationship that forms part of his private life, as is the practical and emotional assistance he provides for her, but I am not able to attach any more than limited weight to the effect of extradition on this non-familial relationship. I have borne in mind that the appellant has created a stable life for himself in the UK and has only one relatively minor conviction (in 2016) in this jurisdiction.

56 It is possible that the activation of the appellant's suspended sentences proceeded on a misapprehension as to the nature of the conviction at Snaresbrook. It is now clear that this conviction was for simple possession, and not supply, of controlled drugs. But it is the Polish court, rather than the UK courts, which must assess whether and to what extent the disclosure of the true position matters. For the time being, I have to proceed on the basis that the Polish sentences, which have not been set aside or varied, stand. It would be wrong to place too much store by the age of the offences for which extradition is sought. It is true that these offences were committed long ago, but the appellant could have avoided extradition for these offences had he complied with the conditions on which his sentences were suspended.

57 The key date so far as any evaluation of delay is concerned is 2017, when the Polish courts activated those sentences and the appellant failed to surrender to custody. The strength of the public interest in extradition is attenuated by the delay after that point, part at least of which is attributable to the respondent state. But the overall length of time left to serve (8 months and 26 days on the first warrant; 1 year, 3 months and 28 days remained on the second warrant) remains substantial. (Sir Duncan Ouseley was mistaken about the length of time left to serve on the second warrant.) Although the offending took place some time ago, and was not of the most serious kind, it was part of a pattern of offending and the Polish courts were entitled to take that into account in imposing the sentences they did. In those circumstances, despite the delay, there remains a significant public interest in the appellant's extradition.

58 While the medical evidence establishes two relevant mental disorders, moderate depression and ADHD (or at least symptoms consistent with ADHD), the District Judge was right to say that neither is particularly unusual and there is no basis to doubt that treatment would be available from the Polish authorities for both, if such treatment were medically indicated. I have carefully considered both of Dr Galappathie's reports. (I read the second report *de bene esse* in advance of considering its admissibility.) I note that the appellant's depression remains "moderate" in severity. I also note the conclusion in the second report that if extradition were ordered there could be a recurrence of previous suicidal thoughts. However, neither of Dr Galappathie's reports suggests that the risks attendant upon suicidal thoughts are unmanageable. Provided that those responsible for detaining and removing the appellant and the Polish authorities who receive him are given up-to-date information about his medical condition, there is no reason why they could not put in place proper measures to prevent him from acting on such thoughts.

Oppression

59 In the light of these conclusions, the challenge to extradition on the ground of oppression must also fail, given the high threshold that has to be reached where an

appellant's mental condition is the basis for the objection: see *Turner v USA*, [28]. On this aspect of the case, the District Judge's summary of the medical evidence before him cannot be faulted, nor can his application of the legal principles to that evidence. The further report of Dr Galappathie does not add materially to the analysis.

Conclusion

60 For these reasons, I conclude that, despite the unexplained delay in this case, extradition is not barred by either s. 25 or s. 21 of the 2003 Act. The appeal is therefore dismissed.