Neutral Citation Number: [2022] EWHC 3155 (Admin)

Case No: CO/1112/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Friday 25th November 2022

Before:

MR JUSTICE FORDHAM

- -

Between:

REGIONAL COURT IN LODZ (POLAND)	**Appellant**
- and -	
MATEUSZ KAZIMERZ SWIATEK	**Respondent**

- -

- -

Tom Hoskins (instructed by CPS) for the **Appellant**
Georgia Beatty (instructed by HP Gower Solicitors) for the **Respondent**

- -

Hearing date: 17.11.22

- -

Approved Judgment

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

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. The Respondent 'requested person' (the "RP") is aged 32 and is wanted for extradition to Poland. That is in conjunction with an accusation Extradition Arrest Warrant (the "ExAW") issued on 26 May 2021. The RP was discharged from extradition by District Judge Callaway ("the Judge") on 23 March 2022 after an oral hearing on 11 February 2022. At that hearing the contents of the RP's proof of evidence were accepted and he was not cross-examined on them. The Judge's order for discharge was based on accepting an argument invoking section 14 of the Extradition Act 2003 (the "2003 Act"). The Judge went on to reject a second argument based on Article 8 ECHR (private and family life). The Appellant 'requesting judicial authority' (the "RJA") appeals, pursuant to section 28 of the 2003 Act, against the decision resulting in the order for discharge. The appeal is on the basis (see section 29(3)) that the Judge "ought to have decided" the section 14 "question differently" and, had he decided that question in the way "he ought to" have done, he "would not have been required" to order discharge. The RP resists the RJA's appeal, for which Stacey J gave permission on 27 June 2022. A "fresh evidence" application by the RJA dated 28 June 2022 providing "Further Information" dated 27 April 2022, is unopposed.

2. There was a "cross-appeal" by the RP, seeking to argue that discharge would have been required, even if the Judge was wrong about section 14, on the Article 8 ECHR question. Such a "cross-appeal" raises the knotty jurisdictional question on which the Divisional Court touched in Turkey v Tanis [2021] EWHC 1675 (Admin) §§89-93, 95; USA v Assange [2021] EWHC 2528 (Admin) §31 and [2021] EWHC 3313 (Admin) at §23. In contesting the Court's jurisdiction to consider the Article 8 "cross-appeal", Mr Hoskins submitted that – were he to succeed on the RJA's section 14 appeal – the case would then need to return to the Westminster Magistrates Court at which the RP would be able to raise Article 8 ECHR for consideration on an up-to-date basis, with a right of appeal on Article 8 to this Court if the Magistrates Court ordered extradition. Mr Hoskins described this as an "alternative remedy". On the express basis of this "alternative remedy", Ms Beatty withdrew the "cross-appeal". In those circumstances I say nothing about jurisdiction and cross-appeals, or about the Article 8 question (except where a reference-point in the Judge's Article 8 reasoning has been pointed to by Counsel as illuminating for the section 14 question).

3. The offending of which the RP stands accused is described in the ExAW as follows:

> ***From June 2010 to at least 28 April 2014, an organised criminal group operated in Łódź, whose members manufactured and traded drugs in the form of amphetamine and marijuana. The group was headed by Krzysztof Wejchan-Rotowicz, who coordinated its activity, organised financing and supplying drugs in the Province of Łódź and organised an illegal drug ring. One of the persons involved in the described drug trafficking and belonging to the said drug ring was Artur Ziarko, with whom Mateusz Świątek cooperated. Artur Ziarko dealt in amphetamine and marijuana sourced from Krzysztof Wejchan-Rotowicz. Once or twice a week, Mateusz Świątek and his partner Karolina Brzezińska bought 5 (five) to 10 (ten) grams of amphetamine and then sold the drug. Between January 2013 and 28 April 2014, Artur Ziarko sold them at least 600 (six hundred) grams of amphetamine. They informed him that they intended to sell the amphetamine. All of the described drug transactions took place in Karolina Brzezińska's flat in Zachodnia Street in Łódź.***

4. Section 14(a) provides as follows:

> ***14. Passage of time. 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)…***

It is common ground that the question was really whether extradition would be "oppressive", rather than "unjust", for the purposes of the section 14(a) bar.

The Judgment

5. In light of the detailed submissions made on both sides relating to the Judge's judgment (the "Judgment"), I am going to set out extensively what the Judge said under three key headings within the Judgment, to which I will then cross-refer. I will use square brackets for paragraph numbers, and for inserting the Judge's footnotes into the text, and I will insert some sub-paragraph numbers. This will help later in cross-referencing what the parties argued, and what I have decided.

6. The first section was under the heading "Law". It occupied Judgment [13] to [19] and involved extensive citation of the case-law. The Judge said this:

> ***[13] The law in relation to this type of challenge is clear: it is not sufficient for a RP to demonstrate long delay in any given case since in order to rely upon this bar the RP must show either injustice or oppression occasioned by the time that has elapsed. This principle has been part of the law of extradition for many years and previous case law still equally applies including the well known case of Kakis v Govt of the Republic of Cyprus [1978] 1 WLR 779 in which it was stated thus:- "... that 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." (per Lord Diplock).***
>
> ***[14] Consideration of s.14 necessitates a fact-specific enquiry (see Steblins v Govt of Latvia [2016] EWHC 1272 (Admin)) although, and notwithstanding that the principles underpinning the doctrine of delay apply, it has been commented that "...in the end the matter is one of judgment if not impression" [fn. see Austins v Govt of Spain [2004] EWHC 2693 (Admin) per Laws LJ para. 16].***
>
> ***[15] Whilst, as already commented the RP in any case cannot rely on the passage of time caused by him fleeing the country or concealing his whereabouts, if a JA can be shown to have been inexcusably dilatory in the taking of necessary steps to bring a RP to justice this may, depending upon individual circumstances, serve to establish the necessary injustice and oppressiveness in order to found a discharge of the application (see Hunt v Court of First Instance Antwerp [2006] EWHC 165 (Admin); R v Boente [2006] All ER (D) 30).***
>
> ***[16] The burden of proof is on the RP to establish according to the civil standard the injustice or the oppression for which he contends. Injustice is directed to the risk of prejudice in the conduct of the trial itself whilst oppression is directed towards hardship to the RP resulting from any change in his circumstances that have occurred during the period to be taken into consideration [fn. see Kakis at 782; Italy v Merico [2011] EWHC 1857 (Admin)]. In this case the RP stresses the latter point and the change in circumstances which have occurred since the initiation of the case and the eventual issue of the warrant.***
>
> ***[17] As to the issue of change of circumstances the court is obliged to consider the circumstances in which the RP came to leave the JA, and in particular, given that this matter is an accusation case whether or not as the case may be that the RP knew of the accusation, whether the RP was made the subject of arrest, what he had understood had happened***

> ***following any arrest, any sense of false security which may have been engendered and any assertions from the JA. I have additional regard to the gravity of the allegation, predicated upon the basis that the less serious an allegation happens to be, then the greater the likelihood of the RP being able to establish that the extradition would be oppressive (see Sapstead v Governor of HMP Belmarsh [2004] EWHC 2352 (Admin)).***
>
> ***[18] As I have already indicated the RP takes an Article 8 challenge in opposition to the extradition request. Naturally there is an overlap between the s.14 challenge and matters which may arise from an Article 8 issue, although there is no automatic cut of point beyond which an extradition must be regarded as unjust or oppressive (see Dziedzic v Government of Germany [2006] EWHC 1750 (Admin)).***
>
> ***[19] I also factor that this is an extradition court and not a court of trial. This point is relevant to issues appertaining to the strength and type of the evidence relied upon. The latter is necessarily a matter for the individual court of trial (see Beresford v Government of Australia [2005] EWHC 2175 (Admin)).***

7. The second key section was under the heading "Evidence", at Judgment [20] to [23]:

> ***[20] Necessarily chronology is an important part of this case and particularly so since the matters which were the subject of investigation commenced in 2014, some 8 years ago when this RP was aged 23 years.***
>
> ***[21] I summarise the salient features of the chronology which is set out in Box f) of the EAW as follows:-***
>
> ***[21a] 2nd October 2014 the Appellate Public Prosecutor's Office took over an investigation into drug trafficking previously conducted by the District Public Prosecutor's Office.***
>
> ***[21b] 3rd November 2014 a suspect in that investigation identified the RP in this application as an accomplice during an interrogation on this date. Point is made that information derived from an accomplice represents a contaminated or suspect source.***
>
> ***[21c] 14th January 2016 a decision is made to charge the RP and to be forcibly brought in for interrogation.***
>
> ***[21d] 19th January 2016 the police visit the flat of the partner of the RP in Lodz. They are informed that the couple are separated and have been so for a significant period of time. The police were also informed that the RP had been in the UK for some 6 months although the former partner did not have an address to furnish.***
>
> ***[21e] 26th February 2016 the case against this RP along with 9 other suspects who had not been apprehended was severed from the case in relation to other co-conspirators.***
>
> ***[21f] 18th July 2016 a search for the RP was ordered. Police report that they were unable to locate his whereabouts notwithstanding checks on public information material including business registers, registers of motor vehicles and criminal record data.***
>
> ***[21g] 17th August 2017 conviction of co-conspirators.***
>
> ***[21h] 23rd May 2018 conviction was upheld on appeal.***
>
> ***[21i] 12th May 2020 a domestic warrant was issued.***
>
> ***[21j] 14th May 2020 the public prosecutor ordered a search for the RP by a wanted notice.***
>
> ***[21k] 1st December 2020 the police locate the whereabouts of the RP in Blackpool. The court register records such an address.***

> ***[21l] 31st December 2020 an application was made for an EAW. As a consequence of Brexit arrangements the EAW lapsed on the 5th March 2021***
>
> ***[21m] 10th May 2021 the application for an arrest warrant, hitherto unheard, was renewed.***
>
> ***[22] I have already commented upon the fact that the RP came to the UK in May 2015 and is regular work. It is common ground in this case that the RP was wholly unaware of the ongoing police enquiry and investigation which I have summarised herein. The RP explains that he is now single although has a daughter … who currently resides with her mother and the former partner of the RP in Blackpool. He attempts to see his daughter every day who lives close to his home. The RP explains that he originally worked for a building company prior to coming to the UK, and since August 2021 had worked prior to his remand for a skip company. He had been so employed for a period of 4-5 months.***
>
> ***[22A] The RP has been granted pre-settled status in the UK and has his own accommodation.***

8. The third key section was under the heading "Discussion", at Judgment [23] to [26]: ##

> ***[23] There is no dispute in this case that there has been delay but the issue in such cases as this matter is an example, is whether or not the delay which is manifest is culpable? The EAW records the efforts made in July 2016 to locate his whereabouts and the checks carried out. It is difficult upon this slender evidence to estimate the application and detail carried out in this particular task from the cursory nature of the evidence before me. However, what is clear from the chronology is that by December 2020 the address and location of the RP was established in Blackpool, yet it took until October 2021, a period of 10 months, to arrest him at the address the J A had as part of their information. This delay is unexplained.***
>
> ***[24] It is certainly the case that the RP had not been engendered a false sense of security given that he had no knowledge of the investigation let alone the proceedings themselves and from the summary of his personal circumstances has established himself in the UK as I have described and has a dependent daughter as identified.***
>
> ***[25] I am obliged to factor the serious nature of the allegations as they currently remain, as well as the period of time which has elapsed since the investigation in the case and the role of the RP in particular. This amounts to a period of just short of 7½ years. I have already commented that the law does not apply an automatic cut off date, however, and considering the collective weight of the evidence as a whole both from the point of view of the chronology and the circumstances of the RP since he came to the UK, including the position of his daughter, has the RP discharged the burden placed upon him to persuade this court that it would be unjust to extradite?***
>
> ***[26] I have found this a difficult and finely balanced case. There are other cases where a greater period of time has elapsed than in the index case and it has been held not to be oppressive or otherwise unjust to extradite the suspect, however, I am of the view that in this particular case and on a balance of probabilities oppression and/or injustice has been established and the RP falls to be discharged.***

9. I will add these further reference points found within the Judgment at [1] (under a heading "The Application Pending"), [7] (under a heading "The Factual Nexus"), [8] (under "Challenges Raised"), [29] (within the discussion of Article 8) and [31] (under "Conclusion"):

> ***[1] [The] RP is a 31 year old Polish National having been born on the 31st March 1990.***
>
> ***[7] The RP files a Proof of Evidence dated the 11th February 2022. Within the Proof he denies the allegations and asserts that although he claims to know one of the alleged co-conspirators he had never sold drugs and was never a drug dealer. The allegations, he claims, are completely untrue. He further states that he came to the UK in May 2015 and is in regular***

> ***work. The RP has a daughter in the UK although he is separated from his partner and the mother of his daughter.***
>
> ***[8ii] s.14 EA 2003: (Passage of time, by which it is contended that it would be unjust or oppressive to extradite this RP by reason of the passage of time since the offence or offending took place).***
>
> ***[29ai] The RP is a man of hitherto previous good character.***
>
> ***[29biii] Notwithstanding the passage of time in this case since the allegation are said to have been committed, the offences themselves are serious with the RP said to be part of a criminal enterprise involved in drug trafficking over a significant period of time.***
>
> ***[29biv] Whilst the RP has a dependent daughter in the UK, he is separated from his former partner and mother of the child who has day to day care of her.***
>
> ***[31] … [G]iven what I have already articulated in relation to the manifest delay in this matter, the extradition request is held to fail and the RP … falls to be discharged accordingly.***

Whether the "outcome" is "wrong"

10. There are many points in and about the Judgment on which Mr Hoskins for the RJA and Ms Beatty for the RP disagree. The ultimate point on which they disagree is as to the "outcome" (Judgment [26]) of the section 14 question (Judgment [8ii]), and whether it was "wrong". Mr Hoskins accepts that the RJA can only succeed if the section 14 "question" ought to have been answered "differently". There is no remittal for reconsideration. The outcome is the nettle which ultimately has to be grasped on both sides. The parties were right to include in the bundle of authorities Love v USA [2018] EWHC 172 (Admin), a case concerned with appealing the overall evaluative judgment in addressing an Article 8 question. I think the present case, in the end, engages the same principle described at §26 of Love. There, Lord Burnett CJ and Ouseley J explained as follows the "true approach" of the appellate court in deciding whether a decision of a district judge was "wrong" on the evaluative issue:

> ***[T]he appellate court is entitled to stand back and say that question ought to have been decided differently because the overall evaluation was wrong: crucial factors should be weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed.***

Mr Hoskins says the outcome was "wrong", including in this sense. Ms Beatty says the outcome was not "wrong", whether in this or in any sense. Before they get to that ultimate position, and in seeking to assist them when it is reached, each Counsel makes a raft of points about the Judgment. I will seek to encapsulate their essence.

The RJA's arguments

11. Mr Hoskins argues, in essence as I saw it, as follows:

    i) The Judge's reasons were legally inadequate and the Court should conclude that the Judge ought to have "decided the relevant question differently" (section 29(3)(a) of the 2013 Act), where "differently" means "by giving legally adequate reasons". Deciding the question "differently" is distinct from a different answer had the Judge "decided the question" in the way he "ought to have done" (section 29(3)(b)). The inadequacy of the reasons supports the

conclusion that the Judge was "wrong" on the section 14 question and justifies a re-evaluation of that question by this Court. In particular, the Judge made no finding applying the high threshold of oppression, a threshold to which he either did not refer or of which he lost sight. The Judge also made no finding on the question he posed (at [23]) as to whether the delay was "culpable", a word synonymous with the phrase (at [15]) "inexcusably dilatory in the taking of necessary steps to bring an RP to justice".

ii) The Judge made factual errors. One was a misstatement in the chronology (at [21b]) as 3 November 2014 being the date of identification of the RP by an accomplice, when the evidence gave that date as 3 November 2015. Another was in describing the Polish police as having located the RP's "whereabouts" on 1 December 2020 (at [21k]) as an "address" in Blackpool (at [23]), when on the evidence it was a 'probable location of' Blackpool rather than a 'known address in' Blackpool.

iii) The Judge also made legal errors or errors of approach. One was that, having correctly identified the emphasis as being on "oppression" (at [16]), the Judge inexplicably switched to "unjust to extradite" (at [25]) and ultimately referred to both "oppression and/or injustice" (at [26]). This was in truth only an oppression case, which meant that the Judge lost sight of and misapplied the two distinct concepts to which he had earlier referred (at [16]). Another was that the Judge made an unjustified finding that the RP's then 7 year-old daughter was a "dependent" daughter" (at [24], and [29biv]). That was in circumstances where the daughter was residing with her mother, who had separated from the RP (see [22]) and there was no evidence of financial dependency. As to the overall 7½ year passage of time (see [25]), there is a maximum relevant period of possible 'delay' of five years from January 2016 (see [21d]) to December 2020 (see [21k]) but this is neither unexplained nor culpable. The period on which the Judge particularly focused was 10 months (see [23]), itself wrongly characterised as "unexplained", which could not possibly sustain a s.14 finding of oppression by reason of the passage of time. Next, although the Judge focused on "the circumstances of the RP since he came to the UK, including the position of the daughter" (at [25]) there was no clear evaluation or weighing by the Judge of the impacts based on a 'causal link' with to the passage of time. Next, although he rightly factored in the "serious nature of the allegations" (at [25], and [29biii]), in accordance with the authorities (see [17]), the Judge was wrong not to conclude that the serious nature strongly undermined the evaluative conclusions (at [26]). Ultimately the Judge treated the question of delay and its 'culpability' (see [23]) as a driving force for his conclusion (at [26]). That was an error of law since the characterisation of delay as "culpable" only enters the equation once the Court has independently identified a "borderline case". This can be seen from Zengota v Poland [2017] EWHC 191 at §32viii ("It is only in borderline cases, where the accused himself is not to blame, that culpable delay by the requesting state may tip the balance against extradition") applying Gomes v Trinidad and Tobago [2009] UKHL 21 at §27 ("in borderline cases, where the accused himself is not to blame, culpable delay by the requesting state can tip the balance").

iv) The Judge's errors are fatal to the soundness of the outcome. Standing back, by reference to the effect of the passage of time and the circumstances and impacts causally linked to the passage of time, factoring in the seriousness of the offending, and even if delay were characterised to any extent as "culpable", extradition could not be regarded as meeting the high threshold of oppression. The relevant impacts constitute a hardship of the kind commonly encountered as flowing from the act of extradition. They and the other features of the case do not justify a finding of oppression. The Judge's conclusion to the contrary was "wrong" and should be overturned.

The RP's arguments

12. Ms Beatty for the RP counters those submissions, arguing - in essence as I saw it – as follows.

i) There was no legal inadequacy in the Judge's reasons and in any event that could not be a basis for allowing the appeal, which can only succeed if the Court is satisfied that the "outcome" is "wrong". There is no power of remittal for reconsideration of a question afresh.

ii) The only errors in the Judgment in the RP's favour are minor and inconsequential. True, there is a typo in the date of 3 November 2014 which should treated as 2015 (at [21b]). True, the Polish police at December 2020 knew a Blackpool "location" (as recorded at [21k]) rather than an "address" (as suggested at [23]). Nothing turns on these. Other errors in the RJA's favour need correcting. First, the reference to an enquiry on 19 January 2016 (at [21d]) omits the evidence of a second enquiry that same day, at the RP's grandmother's address, which also elicited that the RP was in the UK. Secondly, the word "not" must be a typo (at [24]) because a "false sense of security" must have been "engendered" by the complete ignorance of any enquiry, investigation or proceeding (see [22] and [24]). Thirdly, the Judge misappreciated the "seriousness" of the alleged offences (see [25] read with [29biii]) when an accurate characterisation of the ExAW (seen at §4 above) would have been that 'for over a year the RP purchased and sold drugs once or twice a week (at least 600g overall), purchased from a person involved in a criminal enterprise'.

iii) There was no error of approach. This Court should respect the primacy of the position of the Judge as the 'front-line judge' with the responsibility of making findings of fact and arriving at evaluative judgements. It is true that this was an 'oppression' case but there was no material error by the Judge who had recognised that (at [16]) and made a finding on that (at [26]). The additional reference to injustice does not impact on that and in any event is explicable because of the overlap between the two concepts. The characterisation of the "dependent" daughter was justified, on the basis of 'emotional' dependence, in circumstances where the evidence was that the RP sought to see his daughter every single day (see [22]), and nowhere did the Judge suggest 'financial' dependency or misunderstand that there was a separation (see [22] and [29biv]). Although the Judge identified one aspect of the passage of time namely the 10 months which he justifiably characterised as "wholly unexplained" (at [23]), he clearly and explicitly had in mind the overall 7½ months (see [25]). The Judge correctly focused on impacts causally linked to the passage of time, specifically

describing circumstances of the RP "since coming to the UK including the position of the daughter" (at [25]). The Judge factored in the seriousness of the alleged offending [see [17] and [25]), which if anything he overstated. The Judge's conclusion was not simply driven by 'culpability'. He had in mind the serious impacts on the RP with his established and settled status in the UK since May 2015, his stable accommodation and work, his good character, and the strong relationship of daily contact with his young daughter. That relationship would be especially damaged by extradition given the separation and therefore the zero prospect that the former partner would relocate to Poland. The Judge was also obviously very well aware of the relevant "threshold" of oppression and made reference to key authorities which he discussed (see eg. [13] and [16]), having been addressed on them in submissions. Reading the Judgment fairly and as a whole, The Judge plainly did make a finding – overtly – that the threshold of oppression was crossed on the facts of the present case (ie. at [26]). Importantly, the Judge plainly – and again overtly – did find that the delay was "culpable" and "inexcusably dilatory" (at [23] read with [15]). That was a key question which he posed (at [23]) and it is impossible to read his judgment as failing to answer it. That was why he made clear that he was rejecting the evidence put forward by the RJA in describing it as "slender" and "cursory" (at [23]). That position is now reinforced by the fact that the RJA's "fresh evidence" can provide nothing by way of further explanation. The Judge was clearly treating the period, which Mr Hoskins accepts could be taken to involve the five years from January 2016 to December 2020, as culpable delay and inexcusably dilatory in the taking of necessary steps through the RP to justice.

iv) In all the circumstances, and for all these reasons, the criticisms of the Judge's finding on the section 14 question are unfounded. Standing back, the Judge justifiably concluded that the section 14 oppression bar was satisfied. His conclusion should not be overturned by this Court as "wrong".

Discussion

13. I will start by clearing the decks, in light of several of the points raised on both sides. On the evidence that was before the Judge, I agree with both Counsel that "3 November 2014" (at [21b]) should have read "2015", and that in December 2020 the Polish police had identified a probable Blackpool location but not a specific "address" (at [23]). I agree with Mr Hoskins that the references to "unjust" and "injustice" (at [25] and [26]) were inapt to the argument being advanced. But I cannot accept that the Judge lost sight of the distinct oppression limb (emphasised at [16]) and my focus must be on whether the clear finding on that limb (at [26]) was wrong. I do not agree with Ms Beatty that there was a typo in "not" (at [24]). The Judge was very clear that the RP had no knowledge at all of any enquiry, investigation or proceedings (see [22] and [24]), which stands as a clear finding in its own right. The Judge meant "false sense of security" in the sense sometimes found where there is some initial act (eg. an interview) but then a long period of inaction suggesting an absence of investigative or prosecutorial steps. The Judge was saying that there was not, in that sense, an engendered false sense of security. I disagree with Mr Hoskins that there was an error in the Judge's use of the word "dependent". Again, it is clear that the Judge understood there was a separation but daily contact, there is no mention of financial dependence, and so the Judge plainly meant "emotional" dependence through daily contact between this young child and her

father. I do not agree with Mr Hoskins that the Judge lost sight of or ignored the high "threshold" of "oppression". He had well in mind the relevant legal authorities and had been reminded of them. Whether his evaluative conclusion is sustainable on appeal is a different question. But I find no misdirection in law. The Judge, moreover, rightly recognised by reference to authority the "fact specific enquiry" with which he was engaged (see [14]). I cannot agree with Ms Beatty that there was any misappreciation or overstatement by the Judge of the allegations and their serious nature (at [25] and [29biii]: I agree with Mr Hoskins that, read fairly and as a whole, the evidence amply supports the characterisation that the RP was being said to have been part of a criminal organisation with an involvement over an extended period on a very regular basis in the buying and then onwards selling of drugs. I agree with Ms Beatty that, although the Judge made specific reference to the 10 month period, he focused on the overall period of 7½ years and reached his overall evaluation based on that overall period. I agree with Mr Hoskins that the question of delay arose specifically from a five year period, based on the Judge's chronology, which he set out and to which he referred. In my judgment the Judge had in mind the need for the 'causal link' between passage of time and relevant impacts. The Judge was careful, as both Counsel emphasised, to focus on the circumstances of the RP "since coming to the UK including the current position of the daughter" (at [25]). Nothing which I have discussed so far constituted a material or vitiating error, or an error of approach.

14. I agree with Mr Hoskins that the delay and the appropriate characterisation of the Polish authorities' role in it were at the heart of the Judge's assessment. I also agree with Mr Hoskins that "culpable" (at [23]) and "inexcusably dilatory" (at [15]) are effectively synonymous. The Judge considered all of the features of the case in the round as an evaluative judgment, but it is clear in my judgment that it was the delay and the role of the authorities in that delay which were central. This is clear in the way that the "discussion" section (at [23]) is introduced. It is also this point to which the Judge returned at the end of his judgment when he said (at [31]): "given what I have already articulated in relation to the manifest delay in this matter, the extradition request is held to fail and the RP…. falls to be discharged accordingly". In my judgment, the central evaluative finding of the Judge which – I agree with Ms Beatty is "overt", reading the Judgment fairly and as a whole – was that there was a very substantial delay which was "manifest" and "culpable" and meant the Polish authorities had been shown to have been "inexcusably dilatory in the taking of necessary steps to bring the RP to justice" (see [15]). That was an evaluative conclusion, rejecting the RJA's "slender" and "cursory" evidence. It applied to the five years which Mr Hoskins identified, from the two separate searches in January 2016, at which the authorities had been told that the RP was in the UK. By that stage the authorities had decided to charge the RP (see [21c]). And yet, instead of taking the steps which would have stood to locate him within the UK so that he could be brought to justice, they severed his case from that of the other suspects (at [21e]) and proceeded with trials against others (at [21g]). It was only in May 2020 ([at [21i]) that a domestic warrant was issued and a search for the RP ordered (at [21j]) and within a few months the Polish police had a locality (at [21k]) enabling the relevant police force in the UK readily to be contacted, so that extradition proceedings could be pursued. In my judgment, the Judge was entitled to be wholly unimpressed by that sequence of events over that extended period of time. He clearly characterised that "manifest" delay as "culpable", linked to his earlier point about "inexcusably dilatory action" which can serve to establish oppression depending on the individual circumstances (see [15]). It was against that assessment that the Judge

factored in the serious nature of the alleged offending and evaluated the impacts by reference to the passage of time, based on circumstances which had arisen since the RP being in the UK (at [25]). The Judge also clearly had in mind that this was a lengthy passage of time in the life of a relatively young person, being aware (see [1]) that the RP had come to the UK in May 2015 aged 25; was accused of offences when aged 23; and was now about to turn 32. It was during those significant years of his life that he had lived in the UK, with settled employment, with settled accommodation, as a devoted father; and as a person of good character (see [29ai]). All of that moreover, across all of those years, was in complete ignorance of any investigation or proceedings against him in Poland (see [22] and [24]). It was this combination of circumstances which led the Judge to the conclusion reached as to oppression.

15. This evaluative outcome is not one which I am able to uphold, in the application of the exacting threshold of "oppression", reflected in section 14 and in the authorities. There were undoubtedly significant impacts here, causally linked to the passage of time. But I cannot see them as materially distinct from the sort of hardship which is encountered as familiar and inherent in extradition cases. A young daughter would sadly lose the daily contact of her devoted father, and he with her. But this is in circumstances where the daughter's economic dependence did not rely on him, and where she remains with her mother and primary carer. The seriousness of the matters alleged was accurately described by the Judge (at [29biii]), but that level of seriousness made it all the harder to be able to find the threshold of oppression by reason of the passage of time met. All of which brings me to "borderline" cases and "culpability" which can "tip the balance". I agree with Ms Beatty that "culpability" is part of an overall balancing exercise, not something held back for a 'second stage'. But the clear logic of the observations in Zengota and Gomes does raise the question whether, absent a finding of "culpability", there is a section 14 "borderline" case. Those observations stand as a warning against allowing "culpability" of delay to dominate the evaluative assessment. I agree with Ms Beatty that the finding on "culpability" was overt. I agree with Mr Hoskins that it dominated the Judge's evaluative assessment. In my judgment, it is clear from reading the Judgment as a whole that the Judge found this case to be "difficult" and "finely balanced" (at [26]) – and so "borderline" – after already giving very substantial weight to the "culpability" which he had identified as the central question (at [23]). I have had the advantage of argument on the insights in Zengota and Gomes. I have reached a clear view of this case which diverges from the outcome arrived at by the Judge.

16. Standing back, I have concluded that the question of section 14 "oppression" (and injustice) "ought" to have been "decided differently" and that the "overall evaluation" was "wrong". Ultimately, "crucial factors" – namely the nature of the impact of extradition in light of the circumstances arising during the passage of time and causally linked to the delay; the seriousness of the alleged offending; the characterisation of the Polish authorities' conduct in relation to delay – all viewed against the high threshold of oppression did need to be "weighed so significantly differently" as to make the decision "wrong", such that the appeal in consequence should be allowed.

17. I record that reference was made by Ms Beatty to the following: the more than 12 months that the RP has now served on qualifying remand; the best interests of the child which will feature directly in an evaluation of Article 8; and her suggested characterisation of the likely way in which a domestic court in this country would in a comparable case sentence an accused for the alleged offences described in the ExAW.

For the purposes of my appellate function on the section 14 question, I record that none of these matters singly or cumulatively, placed with the other features of the case, were capable of altering the correct analysis or outcome so far as oppression and the passage of time are concerned.

An illustrative reference-point

18. Finally, I will describe one 'working illustration' case from the bundle of authorities. It is a case to which I drew Counsel's attention at the hearing. I proceed with circumspection. The Judge referred to other cases with greater periods of time held not to be oppressive (see [26]). He concluded that he needed to focus on the facts of the present case. He was correct, and I have done that too. I agree that each case turns on its particular facts. But, in considering the authorities, I did find helpful as a 'working illustration' reference-point, the decision of the Divisional Court in Spain v Warne [2015] EWHC 981 (Admin). As can be seen from the judgment, that was a case in which the requested person was one of a group who had arranged to purchase, distribute and sell a large amount of cannabis imported to Spain. The co-conspirators had all been tried and convicted. The district judge had held that extradition would be "oppressive". At the heart of the case was a six-year passage of time between 2007 and 2013. The requested person had eventually arrived in the United Kingdom in May 2010. Although arrested back in 2009, the requested person had got on with his life in the hope that the matters were behind him. During a period from May 2010 to October 2013 there was no communication by either the UK or the Spanish authorities. The requested person had established a new family life, and his new partner and he had a daughter born in early 2013, aged 2 at the time of the hearing before the Divisional Court. The requested person was cohabiting with the partner and daughter, but the partner was not financially dependent on him. The requested person also saw his son from a previous relationship regularly. There was a clear finding of "culpable" delay by the Spanish authorities during the entirety of the period 2007 to 2013. The Court criticised the district judge for not focusing on the 'causal link' which requires "oppression" to be 'by reason of the passage of time'. The Court emphasised (at §28) that although the passage of time was admittedly long, oppression needed to mean a great deal more than just hardship and that the extradition offence and rightly been acknowledged to be a serious one. The judge's findings of fact were all accepted (see §26) including the finding of "culpable" delay over the entirety of the six years from 2007 to 2013 (see §29). Although previously arrested, the delay was not such to lull the requested person into a "false sense of security" although he had a hope that matters were behind him (§29). The requested person had built a new family life. But that could not of itself underpin a finding of oppression by reason of the passage of time in circumstances of allegations of a serious offence (§30). Moreover, the circumstances were not unusual in the context of extradition cases; the requested person was not the sole carer for children nor the sole financial provider for any family; the hardship separation was no more than the case in many extraditions (§30). Taking all of those factors together the Court reached the "firm" conclusion that the decision that extradition would be "oppressive" by the passage of time was "wrong" and that question should have been decided differently (§31). I repeat the cases turn on their own facts. I am not suggesting, for a moment, a 'direct read across' between those facts in the present case. But there are resonant themes, and it is appropriate that I should be transparent about the assistance, in my own thinking, that I derived from that illustrative working example.

Conclusion

19. For the reasons I have given, I have reached the clear view that the Judge ought to have decided the question of section 14 oppression (and injustice) by reason of the passage of time differently and, doing so, would not have been required to order the RP's discharge on the section 14 ground. In those circumstances, I am going to quash the order discharging the RP and remit the case to the Westminster Magistrates Court for a hearing. That will be a hearing at which the Article 8 ECHR issues can be evaluated, on an up-to-date basis. As I explained in the context of the cross-appeal, that is something which the RJA accepted would be the appropriate consequence were its appeal on section 14 to succeed, as it now has.