Neutral Citation Number: [2019] EWHC 780 (Admin)

Case No: CO/1340/2018
& CO/1341/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
IN AN APPEAL PURSUANT TO ss.26 & 27 OF THE EXTRADITION ACT 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 March 2019

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

- -

Between :

(1) ADRIAN PRYSTAJ	**Appellants**
(2) PATRYK PRYSTAJ	
- and -	
CIRCUIT COURT OF ZIELONA GORA, POLAND	**Respondent**

- -
- -

Gemma Lindfield (instructed by **MW Solicitors**) for the **Appellants**
Saorise Townshend (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 19 March 2019

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Approved Judgment

Mr Justice Supperstone :

Introduction

1. The Appellants appeal against the decision of District Judge Crane ("the Judge") made on 26 March 2018 to order their extradition to Poland pursuant to European Arrest Warrants ("EAW") in identical terms that were both issued on 20 June 2017 and the First Appellant's EAW was certified by the National Crime Agency on 17 July 2017, and the Second Appellant's on18 July 2017.

2. The Appellants are brothers. The First Appellant is aged 36. The Second Appellant is aged 31.

3. Their extradition is sought for them to be prosecuted in respect of one offence that on 21 August 2011, "acting jointly and in concert with [each other] and Wiktor Dolgowski" they committed a robbery with violence against a female complainant. It is alleged that they hit the complainant in the face and other parts of her body forcing her to disclose her bank account PIN number. They then stole her bank card and mobile phone (to the value, in the local currency, of approximately £11). The maximum sentence for this offence is 12 years' imprisonment.

4. The Appellants issued and served their applications for permission to appeal on 29 March 2018. The applications were initially stayed on 25 May 2018 by Holman J pending determination of *Lis and Ors v Polish Judicial Authorities* [2018] EWHC 2848 (Admin).

5. On 11 January 2019 Sir Wyn Williams, sitting as a High Court judge, granted permission to appeal on four grounds: first, that the judge erred in concluding that the surrender of the Appellants was not unjust or oppressive by virtue of passage of time (s.14 of the Extradition Act 2003 ("the 2003 Act")) (**Ground 1**). Second, that the judge erred in concluding that the surrender of the Appellants did not contravene s.17 of the 2003 Act (**Ground 2**). Third, that the judge erred in concluding that the surrender of the Appellants would not be disproportionate in light of the Appellants' Article 8 ECHR rights (s.21A of the 2003 Act) (**Ground 3**); and fourth, that the judge erred in concluding that the surrender of the Appellants was not an abuse of process (**Ground 4**).

Relevant Factual Background

6. The First Appellant came to the UK in August 2011. On 16 April 2015 he was extradited to Poland pursuant to three EAWs issued by the Respondent. Ms Gemma Lindfield, who appears for the Appellants, informs me that in relation to one EAW the prison sentence was activated and the First Appellant served a term of imprisonment; and that he was convicted in relation to offences that were the subject of the other two EAWs and sentenced to two years' imprisonment which was reduced to 1½ years on appeal. He was released sometime in October 2015 and returned to the UK that same month. The First Appellant says that the first time he became aware of the allegation that is the subject of the present EAW was in 2017 when the police were looking for him and his brother informed him of this.

7. The Second Appellant came to the UK on 21 August 2011. In 2013/2014 he spent eight months in detention in respect of an extradition request issued by the Respondent. He was returned to Poland pursuant to one EAW in May/June 2014. He was released on bail in Poland and allowed to return to the UK, which he did in July 2014. I understand from Ms Lindfield that subsequently he was sentenced to 1 year and 9 months' imprisonment, suspended for 5 years, for that offence.

Grounds of Appeal

8. I consider it appropriate to deal with the grounds of appeal in the following order: Ground 2 (s.17 of the 2003 Act); Ground 4 (abuse of process); Ground 1 (passage of time); and Ground 3 (s.21A/Article 8 ECHR).

Ground 2: Speciality (s.17 of the 2003 Act)

Legal Framework

Framework Decision

9. Article 27 of the Framework Decision on the European Arrest Warrant and Surrender Procedures between Member States 2002/584/JHA ("the Framework Decision") concerns the possible prosecution for other offences following extradition, and reads:

> "1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
>
> 2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.
>
> 3. Paragraph 2 does not apply in the following cases:
>
> (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
>
> (b) the offence is not punishable by a custodial sentence or detention order;
>
> (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

> (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
>
> (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
>
> (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
>
> (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.
>
> 4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.
>
> For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein."

Extradition Act 2003

10. The Framework Decision was transposed into the 2003 Act by way of s.17 of the 2003 Act. Section 11(1)(f) and s.11(3) of the 2003 Act provide that a requested person must be discharged if his extradition is barred by reason of speciality, the meaning of which is set out in s.17:

> "17. Speciality
>
> (1) A person's extradition to a category 1 territory is barred by reason of speciality if (and only if) there are no speciality arrangements with the category 1 territory.
>
> (2) There are speciality arrangements with a category 1 territory if, under the law of that territory or arrangements made

between it and the United Kingdom, a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition only if—

(a) the offence is one falling within sub-section (3), or

(b) the condition in sub-section (4) is satisfied.

(3) The offences are—

(a) the offence in respect of which the person is extradited;

(b) an extradition offence disclosed by the same facts as that offence;

(c) an extradition offence in respect of which the appropriate judge gives his consent under section 55 to the person being dealt with;

(d) an offence which is not punishable with imprisonment or another form of detention;

(e) an offence in respect of which the person will not be detained in connection with his trial, sentence or appeal;

(f) an offence in respect of which the person waives the right that he would have (but for this paragraph) not to be dealt with for the offence.

(4) The condition is that the person is given an opportunity to leave the category 1 territory and—

(a) he does not do so before the end of the permitted period, or

(b) if he does so before the end of the permitted period, he returns there.

(5) The permitted period is 45 days starting with the day on which the person arrives in the category 1 territory.

(6) Arrangements made with the category 1 territory which is a Commonwealth country or a British Overseas Territory may be made for a particular case or more generally.

(7) A certificate issued by or under the authority of the Secretary of State confirming the existence of arrangements with a category 1 territory which is a Commonwealth country or a British Overseas Territory and stating the terms of the arrangements is conclusive evidence of those matters."

11. Sections 54 and 55 of the 2003 Act set out the circumstances in which a consent request has been made in order for requested persons to be dealt with for offences which were not in the original EAW:

> "**54. Request for consent to other offence being dealt with**
>
> (1) This section applies if—
>
> (a) a person is extradited to a category 1 territory in respect of an offence in accordance with this Part;
>
> (b) the appropriate judge receives a request for consent to the person being dealt with in the territory for another offence;
>
> (c) the request is certified under this section by the designated authority.
>
> (2) The designated authority may certify a request for consent under this section if it believes that the authority making the request—
>
> (a) is a judicial authority of the territory, and
>
> (b) has the function of making requests for the consent referred to in sub-section (1)(b) in that territory.
>
> (3) A certificate under sub-section (2) must certify that the authority making the request falls within paragraphs (a) and (b) of that sub-section.
>
> (4) The judge must serve notice on the person that he has received the request for consent, unless he is satisfied that it would not be practicable to do so.
>
> (5) The consent hearing must begin before the end of the required period, which is 21 days starting with the day on which the request for consent is received by the designated authority.
>
> (6) The judge may extend the required period if he believes it to be in the interests of justice to do so; and this sub-section may apply more than once.
>
> (7) The power in sub-section (6) may be exercised even after the end of the required period.
>
> (8) If the consent hearing does not begin before the end of the required period and the judge does not exercise the power in sub-section (6) to extend the period, he must refuse consent.
>
> (9) The judge may at any time adjourn the consent hearing.

(10) The consent hearing is the hearing at which the judge is to consider the request for consent.

55. Questions for decision at consent hearing

(1) At the consent hearing under section 54 the judge must decide whether consent is required to the person being dealt with in the territory for the offence for which consent is requested.

(2) If the judge decides the question in sub-section (1) in the negative he must inform the authority making the request of his decision.

(3) If the judge decides that question in the affirmative he must decide whether the offence for which consent is requested is an extradition offence.

(4) If the judge decides the question in sub-section (3) in the negative he must refuse consent.

(5) If the judge decides that question in the affirmative he must decide whether he would order the person's extradition under sections 11 to 25 if—

(a) the person were in the United Kingdom, and

(b) the judge were required to proceed under section 11 in respect of the offence for which consent is requested.

(6) If the judge decides the question in sub-section (5) in the affirmative he must give consent.

(7) If the judge decides that question in the negative he must refuse consent.

(8) Consent is not required to the person being dealt with in the territory for the offence if the person has been given an opportunity to leave the territory and—

(a) he has not done so before the end of the permitted period, or

(b) if he did so before the end of the permitted period, he has returned there.

(9) The permitted period is 45 days starting with the day on which the person arrived in the territory following his extradition there in accordance with this Part.

(10) Subject to sub-section (8), the judge must decide whether consent is required to the person being dealt with in the territory for the offence by reference to what appears to him to be the law

> of the territory or arrangements made between the territory and the United Kingdom."

The Parties' Submissions and Discussion on Ground 2

12. Section 17 of the 2003 Act transposes Article 27 of the Framework Decision into UK law. Article 27(2) states that a person surrendered may not be prosecuted for an offence committed prior to his extradition subject to a number of exceptions. The Appellants' extradition is sought for an offence that took place in 2011, prior to their previous extradition. In this case the relevant exception is (g) "where the executing judicial authority which surrendered the person gives it consent in accordance with paragraph 4" (see para 9 above).

13. Section 17(2) of the 2003 Act states that if speciality arrangements are in place a person who is extradited to the territory from the UK may be dealt with for an offence committed before his extradition if one of the sub-sections in (3)(a)-(f) apply. The relevant sub-section in the present case is (c): "an extradition offence in respect of which the appropriate judge gives his consent under section 55 to the person being dealt with" (see para 10 above). Section 55(10) states that the judge must decide "whether consent is required to the person being dealt with in the territory for the offence by reference to what appears to him to be the law of the territory or arrangements made between the territory and the United Kingdom" (see para 11 above).

14. The Appellants rely on the report of Ms Dabrowska, a Polish lawyer, dated 24 October 2017. Ms Dabrowska states that Article 27 mirrors Article 607 of the Polish Code of Criminal Procedure. Ms Lindfield submits that it is clear from Ms Dabrowska's report that the EAWs in the present case should not have been issued or executed unless, as described at point 8 of paragraph 2 of Article 607, the UK court had consented to the Appellants being prosecuted for the offence.

15. Before the judge the Appellants argued that they are still subject to sentences imposed for the offences on which they were previously extradited. Therefore, the Polish authorities have issued the EAWs in error as the speciality principle applies and none of the exemptions apply (see Judgment, para 31). Having observed that "[t]his is an unusual situation where neither party could find any case law dealing with the point", the judge expressed herself (at para 32) as being satisfied that the Appellants' extradition is not barred by reason of speciality because:

> "(a) The purpose of Article 27 is to ensure that those who are returned via EAWs are not dealt with for other matters which pre-date the issue of the EAW without the extraditing court having a proper opportunity to consider if there are any bars to extradition. It is to prevent an abuse of the EAW system by requesting states.
>
> (b) The RPs [requested persons] are no longer in Poland but have returned to the UK.
>
> (c) There is no prejudice or unfairness to the RPs if the matter is dealt with by way of EAWs rather than consent. The court must

> confer the same potential bars to extradition under an EAW and a consent request.
>
> (d) If this court dealt with the RPs by way of a consent request there would be no mechanism for returning them to Poland.
>
> (e) The RPs can only rely on section 17 if they show that there are no speciality arrangements in place with the requesting state. All EU countries are signatories to the 1957 European Convention on Extradition which includes a provision, preventing extraditees from being dealt with for offences other than those for which he or she has been extradited. Further, the evidence of Katarzyna Debrowska, the Polish advocate, confirms that speciality arrangements are in place.
>
> (f) The issue of any failure by the Polish authorities to deal with these matters earlier when the RPs were in Poland, such as by a consent request at that time, can be dealt with when considering potential bars to extradition by way of section 14, Article 8 and abuse of process."

16. In responses to requests for further information ("RFFI"), the Respondent stated: (1) in RFFI dated 20 October 2017 in relation to the Second Appellant, that the prosecutor was not aware of the offences contained within the extant EAW and therefore a consent request was not made; and (2) in RFFI dated 25 October 2017, in relation to the First Appellant, that they made attempts to seek his consent but he did not attend the hearing. In RFFI dated 28 October 2017 the Respondent stated:

> "(iii) Due to the fact that the European arrest warrant was issued on 20 June 2017, at present there is no possibility to make a request for consent under Article 27(4) of the Council Framework Decision on the European arrest warrant, as now it is necessary to proceed according to the new European arrest warrant.
>
> (iv) Under Polish law it is possible to issue a new European arrest warrant in the circumstances where a consent request under Article 27(4) of the Council Framework Decision on the European arrest warrant could have been made.
>
> (v) Under Polish law, Katazyna Debrowska's report is not binding for the authority conducting the proceedings…"

17. Ms Townshend accepts that the Respondent should have sought consent under Article 27 and the Polish Criminal Code, but she submits that the decision of the judge is correct for a number of reasons. First, the rule of speciality has not been breached in this case since the s.17 bar to extradition is directed to whether there are speciality arrangements in place, not whether a person can be extradited (under an EAW as in this case) for offences he committed prior to a previous extradition (see Judgment, para 32(e)). Sub-section (2) sets out what those arrangements are. Accordingly, extradition is not barred since there are speciality arrangements in Poland.

18. Second, Ms Townshend accepts that extradition can be barred by reason of s.17 if the effectiveness of speciality arrangements is in question (see *Brodziak and ors v Poland* [2013] EWHC 339 (Admin)). That is not this case. The EAWs are requesting the Appellants' surrender through the proper judicial process. Even if the Respondent's explanations for not obtaining consent (see para 16 above) demonstrate a failure to follow the correct procedure in Poland, there is, she submits, no risk that the Appellants' speciality would be breached. The judge conducted the same exercise when she ordered extradition by considering the bars to extradition (set out at s.11-25 of the 2003 Act), as she would have considered when analysing a consent request (see s.55(5) at para 11 above). Therefore, adopting a purposive approach, as the judge did (see Judgment, para 32(a)), the effect of either a consent request or an EAW are the same.

19. Third, the judge correctly considered it relevant that (i) the Appellants are no longer in Poland but have returned to the UK (Judgment, para 32(b)), and (ii) that if she had dealt with them by way of a consent request there would be no mechanism for returning them to Poland (Judgment, para 32(d)). As to (i), the wording of s.55(5) suggests that a judge at a consent hearing will not have the "consentee" before him at a hearing in the UK. As to (ii), a consent request would not be effective in circumstances such as these. It is not an extradition request and there is no provision within the 2003 Act to facilitate removal.

20. Fourth, UK courts in extradition cases have in the past dealt with the issue of any failure by the Polish authorities to comply with the consent procedure when considering potential bars to extradition by way of s.14 or s.21 (Article 8 ECHR) of the 2003 Act (see Judgment, para 32(f)), and abuse of process (see *Zapala v Poland* [2017] EWHC 322 (Admin), per Blake J at para 23; and *Szlichting v Poland* [2017] EWHC 1066 (Admin), per Sir Ross Cranston (sitting as a judge of the High Court), at paras 20-24). I agree with Ms Townshend that absent an express bar it is difficult to imply one (See *Szlichting* at paras 2, 17 and 23).

21. In circumstances where there is a conflict between the Respondent and the Appellants' expert as to whether it is possible to issue an EAW when a consent request should be made, but was not, I agree with Ms Townshend that the strong principle of mutual trust and confidence requires this court to accept the opinion of the respondent judicial authority. In my view there is no reason to depart from that principle in the present case. In *Ruiz v Central Court of Criminal Proceedings No.5 of the National Court, Madrid* [2008] 1 WLR 2798, Dyson LJ said (at pra 67):

> "It is to be presumed that the Spanish authorities will act in good faith in the absence of compelling evidence to the contrary. They are trusted extradition partners and parties to the Framework Decision. They have incorporated the speciality rule into their domestic law, so that the appellants have a remedy under their domestic law in the unlikely event of a breach of speciality."

There was in that case no compelling evidence that the Spanish authorities would act in breach of their speciality rule and Article 27 of the framework decision (para 68). Similarly, in my view, there is no compelling evidence that the Polish authorities will act in breach of their speciality rule.

22. Ms Lindfield accepts that there would be no mechanism for the return of the Appellants if they are in the UK at the time consent is given. However, she contends that the request for consent is a necessary procedural step and a precursor to the issue of the domestic warrant and therefore also of the EAWs. When considering a request for consent the focus, she submits, is different from what it is in extradition proceedings. The focus would be on why the consent request was then being made.

23. I do not accept that the failure of the Respondent to issue a consent request in this case amounts to a bar to the Appellants' extradition for the reasons given by the judge and by Ms Townshend.

Ground 4: Abuse of Process

24. Ms Lindfield accepts that the speciality ground (Ground 2) and this ground stand together.

25. The Appellants contend that there was evidence before the judge which suggested that the Respondent had knowingly failed to follow the correct procedure and had issued EAWs which were clearly invalid according to Article 607 of the Polish Criminal Code, and section 17 of the 2003 Act, such that the good faith underpinning the EAWs had been seriously called into question. In those circumstances Ms Lindfield submits, following the decision of this court in *R (USA) v Bow Street Magistrates' Court and others ("Tollman")* [2006] EWHC 2256 (Admin), there was sufficient evidence for the judge to have been satisfied that there was reason to believe that an abuse may have taken place. In those circumstances the CPS should have requested further clarification of how the Respondent asserts that they may issue EAWs without first obtaining the consent of the UK court, and there was, Ms Lindfield submits, a duty on the judge to enquire into the situation and ensure that the court's procedure was not being abused.

26. The judge acknowledged that if EAWs are issued contrary to the law in the requesting state that could amount to an abuse of process (Judgment, para 46). The judge continued:

> "47. However, I do not consider it is the purpose of this court to investigate the Polish criminal procedure when the Polish authorities have said that warrants have been validly issued. There is no evidence of any bad faith or manipulation of the court process by the Polish authorities. They have explained why the matters were not dealt with when the RPs were in Poland. Whilst it may seem surprising that the relevant authorities were unaware that the RPs were in Poland or failed to ensure that they were questioned about the matter before being released and free to leave Poland, there is nothing to show that this was a deliberate ploy to delay dealing with the matters. All the evidence points to a lack of communication between the various Polish authorities, such as the prosecutor, courts and prison authorities."

27. There is a high threshold for an abuse of process argument to succeed. This court would have to find that the Respondent has "usurped the extradition process" (*Belbin v France* [2015] EWHC 149 (Admin), per Aikens LJ at para 59). However, there is no basis, in

my view, for finding that the process has been usurped, and there is no evidence of bad faith, nor that the prosecutor or the court is "manipulating or using the procedures of the court in order to oppress or unfairly to prejudice a defendant before the court" (*Tolman*, per Lord Philips CJ at para 82); nor is there any evidence that the Respondent knowingly failed to follow the correct procedure.

28. The judge noted that the Appellants have had the same legal protection and judicial oversight of the request by the Respondent for their return whether it is dealt with by way of an EAW request or a consent request (Judgment, para 48). As the judge had previous observed, the use of the extradition process, as opposed to the consent process does not oppress or unfairly prejudice the Appellants (Judgment, para 32(c), see para 15 above).

29. I consider that the judge was correct to find that an abuse of process argument was not made out.

Ground 1: Passage of Time

30. Section 14 of the 2003 Act provides:

> "**Passage of time**
>
> A person's extradition to a category 1 territory is barred by reason of passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have—
>
> (a) committed the extradition offence (where he is accused of its commission), or
>
> (b) become unlawfully at large (where he is alleged to have been convicted of it)."

31. The Appellants are not fugitives as they had not been made aware of the charges and proceedings on the current EAWs. The judge therefore correctly found that they could rely on s.14.

32. However, despite the delay in this case from the time of the offence to the issue of the EAWs being just under five years, and finding that "there is some culpable delay on the part of the Polish authorities from the date of the previous extraditions to the issue of the EAWs" (Judgment, para 27), the judge found that the issue of any delay can be dealt with by Poland as part of the trial process, and therefore, their extradition will not be unjust.

33. Further, whilst acknowledging that the delay will create hardship for both Appellants ("as they have returned to the UK upon their release from custodial sentences in Poland, with [the First Appellant] complying [with] the conditions of his suspended sentence, expecting to resume their lives here with family and work"), the judge did not consider that the hardship to the Appellants was oppressive. She therefore concluded their extradition is not barred by the passage of time (Judgment, para 27).

34. Ms Lindfield submits that the judge understated the multiple failings of the Respondent in each appellant's case. She failed to give sufficient weight to the actions of the Respondent in failing to identify that the Appellants had been extradited to its authority on other offences, failing to deal with them when in custody in Poland, failing to issue a timely consent request and failing to issue an EAW expeditiously. Further, the judge failed to take into account the oppressive nature of further extradition which would result in the Appellants enduring two periods of incarceration, rather than one.

35. In *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, a case decided under the equivalent provision of the Fugitive Offenders Act 1967, Lord Diplock, in a well-known passage (at page 782), stated:

> " 'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair."

36. In *Gomes v Government of the Republic of Trinidad and Tobago* [2009] 1 WLR 1038, Lord Brown (at para 32), delivering the opinion of the Committee, agreed with the statement of Lord Diplock in *Kakis* (at 784) that "the gravity of the offence is relevant to whether changes in the circumstances of the accused which have occurred during the relevant period are such as would render his return to stand his trial oppressive". However, Lord Brown continued: "That said, the test of oppression will not easily be satisfied: hardship, a comparatively commonplace consequence of an order for extradition, is not enough". With regard to the concept of injustice Lord Brown noted that the law has moved on since *Kakis*. He stated that whether the passage of time had made it unjust to extradite the fugitive depends upon whether a fair trial is impossible (para 33).

37. I consider that the Appellants' case at its highest falls far short of establishing that their extradition would be unjust or oppressive through passage of time. Council of Europe countries should be assumed capable of protecting an accused person against an unjust trial (*Gomes*, para 35). On the evidence there is no basis for concluding that the passage of time in the present case has made a fair trial impossible.

38. The First Appellant says that he is now on friendly terms with his ex-partner and that he sees his nine-year-old daughter at weekends, having worked hard to build up a good relationship with her, which had been damaged following his previous extradition. However, he does not have the sole care of his daughter. She was looked after by her mother when he was previously in custody in Poland in 2015. The Second Appellant does not have any children or dependants in this country. In the circumstances I do not accept that any hardship suffered by the Appellants amounts to oppression for the purposes of s.14.

39. The seriousness of the offence must also be taken into consideration. As Baker LJ observed in *Hutton v Government of Australia* [2009] EWHC 564 (Admin) (at para 14):

> "Oppression cannot be considered in isolation from the nature of the offence or offences for which extradition is sought. The more serious the offence, the greater the public interest there is likely to be in extradition taking place."

The alleged offence is serious. It involved a group attack on a female victim and substantial violence was used (see para 3 above).

40. In my view the judge was correct to find that the Appellant's extradition is not barred by the passage of time.

Grounds 3: s.21A of the 2003 Act (Article 8 ECHR)

41. Ms Lindfield submits that the Appellants' extradition would be disproportionate having regard to their Article 8 rights for three reasons: first, the judge erred in failing to take into account the conduct of the Respondent in respect of the culpable delay and the failure to request the UK's consent to deal with the Appellants for other matters. Second, the judge did not address the issue of a false sense of security (see *Zapala v The Circuit Court, Warsaw, Poland* [2017] EWHC 322 (Admin)) that was engendered by the fact that the Appellants had been extradited previously and were entitled to assume that there were no other matters for which they were sought. Third, since the judgment below the Appellants have been subject to an electronically monitored curfew for a further year, so in total they have been subject to an electronically monitored curfew for over 18 months.

42. Ms Lindfield does not suggest that the judge did not apply the correct legal principles.

43. Her first criticism of the judgment is really a dispute about the weight that should be given to the culpable delay of the Respondent and the failure to request consent. Plainly the judge had regard to both these matters. She found that "there is some culpable delay on the part of the Polish authorities from the date of the previous extraditions to the issue of the EAWs" (para 27), but that in the case of both Appellants "most of the delay" was due to the Respondent not being able to locate them (Judgment, para 37(e) and para 40(e)). Further, in relation to both Appellants the judge took into account that they will experience hardship "due to the failure of the [Respondent] to deal with the matters when [they were] previously extradited to Poland on other matters" (paras 38 and 41). That is a reference to the Respondent's failure to request consent to deal with the Appellants for other matters at that time (see also paras 36(d) and 40(d)).

44. As for the second criticism, the circumstances of the appellant in *Zapala* material to Blake J's observation of the appellant having been left with "a subjective impression of a false sense of security" (para 23(v)) were significantly different from those prevailing in the present case. The family life of the Frist Appellant is limited and the Second Appellant, aside from his brother, has no other family or dependants in the UK (see Judgment, paras 37(b) and 39(e)).

45. The judge had regard to the delay of nearly five years from the date of the alleged offence to the issue of the EAWs. However, in my judgment she was not wrong to conclude that that delay, which included a period of culpable delay (and despite the failure of the Respondent to deal with these matters when the Appellants were previously extradited to Poland), did not overturn the weighty public interest in

extradition in circumstances where it is alleged the Appellants have committed a serious offence which is likely to result in a substantial custodial sentence in the event of conviction.

46. As for Ms Lindfield's third criticism, I accept that the fact that the Appellants have now been subject to an electronically monitored curfew for over 18 months, which has been an interference with their liberty, should not be ignored (see *Bicioc v Baia Mare Local Court, Romania* [2017] EWHC 3391 (Admin), per Dove J at para 36). However, this factor does not, in my view, come close to tipping the balance on the Article 8 issue and proportionality in the Appellants' favour.

Conclusion

47. For the reasons I have given none of the grounds of appeal are made out. The judge did not make the wrong decision. Accordingly, this appeal is dismissed.