Neutral Citation Number: [2024] EWHC 3119 (Admin)

Case No: AC/2024/LON/000192

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 December 2024

Before:

MRS JUSTICE CUTTS

- -

Between:

PIOTR NOSEK	**Applicant**
- and -	
DISTRICT COURT OF LUBLIN, POLAND	**Respondent**

- -

- -

Jack Boswell instructed by **Hodge Jones and Allen** for the **applicant**

Stefan Hyman instructed by **Crown Prosecution Service** for the **respondent**

Hearing date: 30 October 2024

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Approved Judgment

This judgment was handed down remotely at 11am on Tuesday 10 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Introduction

1. This is an application for permission to appeal the decision of District Judge Clarke on 15 January 2024 to order the applicant's extradition to Poland. If permission is granted on any ground, the applicant appeals that decision.

2. The arrest warrant ("AW") is a conviction warrant issued by a judge of the District Court of Lublin, Poland on 29 November 2022. It was certified by the National Crime Agency on 9 January 2023.

3. The AW relates to fifteen offences of fraud, valued cumulatively at PLN 337,724.20, equivalent to £64,557.03. The applicant was convicted in Poland on 31 March 2021. He was sentenced to four years imprisonment. The entirety of the sentence remains to be served.

4. The applicant seeks leave to appeal on two grounds:

   i) First, that the District Judge erred in finding that the applicant deliberately absented himself from his trial;

   ii) Second, that the District Judge erred in finding that the applicant's extradition would not cause a disproportionate interference with the Article 8 rights of the applicant and his family. In this regard it is submitted that the District Judge erred in finding that the applicant is a fugitive from justice.

The Arrest Warrant and Further Information.

5. At Box D the AW states that the applicant was not present at the trial resulting in the decision and was not personally summonsed thereto but in another way received the official information of the appointed date and place of the trial in a way that allows the Judicial Authority to claim that he knew about the appointed hearing and had been informed that "the decision may be issued in case the person will not appear at the hearing."

6. Further details are given at paragraph 4 of Box D – that the court summons for the trial date were sent to the applicant by post to the address he had designated (Zgodna Street 2/1). He did not collect it although he was notified twice. Therefore, pursuant to the regulations of the Polish Code of Criminal Procedure, it was returned to the Circuit Court in Lublin and attached to the file as deemed duly served due to the fact that the applicant had not designated another address for correspondence. During the proceedings he was represented by defence counsel – an attorney Dagmara Winkler whom he had chosen for himself.

7. Box F states that the judgment became final and valid on 7 August 2021. The applicant failed to appear at the prison when required to surrender himself.

8. Further Information ("FI") dated 13 November 2023 stated that between May 2014 and May 2018 there were 33 trial dates in total. The applicant participated in 9 of those in person. In September 2018 a new judge was appointed and the trial began again. There were 21 trial dates between October 2018 and March 2021. The applicant did not attend any of them. The correspondence directed to the applicant was not collected by him. It was notified twice at the post office and then returned to the court. It was filed with the

record of the case and deemed as duly served as the applicant had not indicated another address for correspondence.

9. The FI further stated that at the pre-trial stage the applicant was represented by two lawyers of his choice – Dagmara Winkler and Pawel Sobieszewski. He was represented by Ms Winkler throughout the court proceedings. However, it should be stressed that the defending lawyer did not participate regularly in trials although she had been notified by the court of each trial date. Between receipt of the indictment until September 2019 (sic) when the judge was changed she attended 7 out of 33 dates. During the proceedings, after the change of the judge, she attended 3 out of 21 trial dates.

10. The FI further stated that the applicant was notified in writing of the content of article 75 paragraph 1 of the Code of Criminal Procedure, pursuant to which an accused who is not detained is obligated to appear whenever summoned and to advise the agency conducting the proceedings of any change of residence or sojourn exceeding 7 days. Thereby the applicant was aware of the obligation to advise the court of each change of address. This instruction, together with the court summons to the first trial date, was served on him on 16 April 2014. He acknowledged receipt of the instruction with his own signature. The applicant was subject to these obligations throughout the criminal proceedings. In the opinion of the Judicial Authority, this showed that when he failed to attend the prison he was a fugitive.

11. The FI confirmed that initially after charge the applicant was banned from leaving Poland. That ban was lifted on 29 April 2015.

The judgment of the District Judge

12. The District Judge recorded that the applicant was arrested on 20 August 2023 after he had voluntarily surrendered at Slough Police Station. He was granted bail on 20 September 2023 and had remained on bail thereafter.

The applicant's evidence

13. The applicant gave evidence at the extradition proceedings. He said he had been with his partner whom he met in Poland since 1988. They had five children born between 1989 and 2002. Life was not easy in Poland where it was difficult to find work in the construction industry and wages were low. The family lived in cramped unsuitable accommodation for 18 years. His wife was unemployed for 22 years. The applicant left to work in Germany in 1991 to enable him to financially support his family. He worked there and in casual employment in Poland until he came with his family to the United Kingdom in 2008.

14. The applicant denied his guilt of the offences of which he was convicted. He was represented by Dagmara Winkler whom he was paying privately throughout the proceedings. He was initially banned from leaving Poland. In 2015 that ban was lifted. He understood that this was to enable him to live and work in the United Kingdom. He thereafter came to the UK for work. The court did not require an address in the UK as his family were still living at the same address in Poland.

15. The applicant said that he would travel back to Poland to attend court when required. As there were a number of co-defendants, there were a lot of witnesses to give evidence. After he was cross examined, he was not required to attend the court again and did not receive any further summons after that point. He was unaware that his solicitor stopped attending court at some point. The case updates were not being communicated directly to him. Throughout 2017 they were trying to make contact with her by telephone and she would not answer their calls. They had no other way of communicating with her. He did not instruct another solicitor as he had already given evidence in his defence and did not think it necessary until the trial concluded. A co-defendant kept him updated on the case progression until 2020. In cross examination, he said that the last money paid to the lawyer was by his son but she did not turn up to the meeting. He could not remember when the last occasion was that she attended to collect the money as it was so long ago. He did not expect that she would not attend the hearings. If he had been told she was not, he would have tried to instruct another lawyer. He did not think he ought to get a new lawyer as he was always thinking she had a reason for not attending as she had a small child.

16. The applicant said he lost his phone in early 2020 in the sewage works where he worked. He lost all his contacts. The COVID pandemic meant he could not travel to Poland. He made several attempts to contact the court to get information, but they would not give information over the phone. He was never sent any paperwork from the court informing him of the case concluding or that he had been sentenced. His registered address for his Polish identity card was his mother's address at Zgondna 2/1. He never got round to changing that when he moved out. His mother lived there until 2017/2018 at which point all the residents were evicted as the building was demolished. The Polish Court had always had his proper home address at Firlejowska number 30E for correspondence. They wrote to him there on numerous occasions throughout the proceedings. When he was on bail an officer would come there and tell him when the next hearing was. Once the bail conditions were discharged the court summons and other correspondence would be sent to this address. That is how he would know to come to court. Nothing was ever sent to his mother's address.

17. The applicant said that since 2017 no court summons or other documentation was sent to the Firlejowska address. His eldest son has lived there continuously and never received anything in that time.

18. He said that the first time he knew he had been convicted was shortly before he was arrested. A friend told him. As soon as he was aware that he was wanted he surrendered himself at Slough Police Station. It was not his intention to hide from the authorities. When he left in 2016, he did not know if he had been convicted or not. When he found out that he had been convicted and there was an AW out for his arrest he tried to get information and paid his solicitor in Poland who told him he was not able to get a file from the court until the proceedings were over.

19. As to his life in the UK, the applicant said that he started living here permanently in 2016. He did so as there were difficult living conditions in Poland where he was not earning enough money. He worked continuously in various fields until he started having problems with his legs in the last 5 years. After many investigations, he was diagnosed with gout. He was prescribed medication which dramatically improved his condition and allowed him to work.

20. By 2018 most of his family came to join him in the UK. They are a close-knit family and live close to each other, spending as much time as possible with each other. He now has 5 grandchildren in the UK aged between 1 and 15 years. He and his wife help the family by caring for them as much as possible. He has a settled life here. He has always worked and paid tax and national insurance in his own name. He has opened bank accounts, registered for the GP and applied for settled status. He applied to renew his Polish passport in 2021 and provided his home address. He has tried to put his problems in Poland behind him and made a good life for his family.

21. The applicant said that, if he was extradited, his life would be completely ruined. He would have to leave his entire family behind as it would be very hard for them to adjust to life in Poland. As he only has pre-settled status, he did not think he would be able to rejoin his family on completion of his sentence. He is relied upon as the head of the family. It would have a detrimental impact on his physical and mental health if he were extradited and it would be difficult for him to adjust to life in Poland without his family. He has hypertension and high blood pressure.

The District Judge's findings

22. The District Judge set out the history of the case as outlined above. She said that she did not agree that a lifting of a ban preventing someone from leaving the country is the same as the court giving its express consent to the applicant to live in the UK and she had no information from the Judicial Authority about that.

23. Given that the court had the applicant's nominated address as his mother's address, and they had no other she did not accept that he told the court of any change of address. She did not accept the applicant's evidence (the only evidence on the point) that summonses were sent to his actual address. The information that she had was clear – there was only one address given, the applicant did not give a second address, summonses were sent to the address he had nominated, and he did not attend court.

24. The District Judge found to the criminal standard that the applicant was a fugitive. He came to the UK in 2016 when the trial was still ongoing. There was nothing to prevent him from doing so but he was required, and signed to confirm he was aware of this, to attend hearings when summonsed to do so.

25. The District Judge did not know why the lawyer stopped attending court but, even if what the applicant said was correct, she found it remarkable that he did nothing further in terms of either notifying the court or contacting a new solicitor until he became aware more recently that there was an AW outstanding against him. The District Judge found that the applicant was evasive in the evidence he gave. She did not accept his account that he did not remember signing the document about the change of address or that he notified a change of address to the authorities.

26. The District Judge found that at the time he came to the UK the applicant knew that the trial was ongoing. He knew that there was a possibility that he would be convicted and knew that if he was convicted there would be a sentence to serve. In her view he was clearly a fugitive from justice having failed to provide an updated address, having left the country with the trial outstanding and making no efforts to continue to engage with that trial and making no efforts to establish the outcome of the trial and making no efforts to surrender to prison.

27. The District Judge was sure that the applicant had deliberately absented himself from his trial. Whilst he was permitted to have his passport back and there was nothing to prevent him from leaving Poland, he signed to confirm that he would have to attend every hearing when summonsed to do so. He did not do so. She rejected the account given by the applicant in relation to his lawyer. She found it unbelievable that someone would instruct a lawyer to continue to represent them so they need not attend and then, when informed that they were not attending on their behalf and had no contact, they do nothing to rectify the situation. She was therefore satisfied that the requirements of section 20 of the Act were met.

28. On the issue of the applicant's private and family life, the District Judge engaged in the balancing exercise required as set out in the well-known judgment of *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin). In considering the factors in favour of refusing extradition, she took into account that the applicant had lived in the UK for a number of years, has worked in that time and committed no offences; almost all of his family are here. They are close-knit and he is said to be dependent on his wife; the applicant has a number of health conditions and there had been a passage of time/delay since the offending.

29. Having conducted the balancing exercise, the District Judge found that it would not be a disproportionate interference with the Article 8 rights of the applicant to order his extradition. Her reasons included that the applicant was a fugitive, the offences were serious with a significant term of imprisonment to serve, the Judicial Authority were not dilatory in terms of the delay, the applicant's children are adults and not financially dependent on him, his health conditions were common and could be treated by the Polish authorities.

The legal framework

Deliberate absence from trial

30. Section 20(3) of the Act requires the judge, where a person was convicted in his absence, to determine whether he was deliberately absent from his trial. If the judge decides that he was not, section 20(5) requires the judge to determine whether the requested person would be entitled to a retrial or (on appeal) to a review amounting to a retrial. If not, pursuant to section 20(7), the judge must order his discharge.

31. In *Cretu v Local Court of Suceava, Romania* [2016] EWHC 353 (Admin) the court held that an accused who has instructed a lawyer to represent him in the trial is not, for the purposes of section 20, absent from his trial, however he may have become aware of it.

32. In the recent case of *Bertino v Public Prosecutor's Office, Italy* [2024] UKSC 9 the Supreme Court held that a person could not be held to be deliberately absent from his trial unless he had been notified of proceedings against him and had unequivocally waived his right to attend. Cases are fact specific and it is possible to find an unequivocal waiver if the facts are strong enough without, for example, the accused having explicitly been told that the trial would proceed in absence.

Fugitivity

33. The law of fugitivity is well known and need not be set out in any detail. It is well established that fugitivity relates to a requested person's state of mind at the time he leaves the requesting state. See *Gomes v Government of Republic of Trinidad and Tobago* [2009] UKHL 21. The judge must consider whether, at the time at which he so leaves he sought to knowingly place himself beyond the reach of the authorities, be they judicial or administrative, of the requesting state. The fact, if it be the case, that a person's motive for leaving the jurisdiction was economic and not a desire to avoid the sentence does not make the principle inapplicable. Thus, even if a requested person sought to move to the UK to make a better life for himself, if he knows that a consequence of his action is to place himself beyond the reach of the prosecution, then he is a fugitive.

34. A person does not become a fugitive if he becomes aware that he is sought in the requesting state whilst outside that jurisdiction. See *Pillar Neumann v Public Prosecutors Office of Klagenfurt Austria* [2017] EWHC 3371 (Admin).

35. In *Ristin v Court of Timisoara, Romania* [2022] EWHC 3163 (Admin) Fordham J held that the judge had been entitled to find the requested person to be a fugitive in circumstances where he knew he was subject to ongoing proceedings but was not subject to any obligations and the time for surrender to prison had not arrived. There was no legal obligation for him to remain in Romania but that did not prevent him from being a fugitive when leaving the country. The case could be characterised as falling within the classic character of fugitivity: knowing and evasive relocation.

Private life rights

36. Again, the legal principles concerning Article 8 rights are well established. In *Norris v Government of the United States of America (No. 2)* [2010] UKSC 9 the Supreme Court held that interferences with rights protected by Article 8, a qualified right, must be "exceptionally serious" before extradition is disproportionate.

37. In *HH and PH v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25 the Supreme Court held that there was a strong and weighty public interest in extradition so that people convicted of crimes serve their sentences. The UK should honour its treaty obligations to other countries and there should be no safe havens to which people can flee in the belief they will not be sent back. It is likely that extradition will be compatible with Article 8 unless its impact upon the requested person and his family was exceptionally severe.

38. As stated above *Celinski* set out the approach that judges should adopt at first instance. There is no dispute that the District Judge followed the correct approach in this case.

39. In *Love v Government of the United States of America* [2018] EWHC 178 (Admin) Lord Burnett CJ held that the appeal must focus on error: what the judge ought to have decided differently, so as to mean that the appeal should be allowed. Extradition appeals are not re-hearings of evidence or mere repeats of submissions as to how factors should be weighed. The appellate court must decide whether the decision of the judge was wrong in that crucial factors should have been weighed so significantly differently as to make the decision wrong.

Submissions of the parties

The applicant

Ground 1 – deliberate absence

40. Mr Boswell submits that the judge was wrong to have found that the applicant deliberately absented himself from his trial and that section 20 of the Act was therefore satisfied. In support of that submission, Mr Boswell relies on the following facts:

    i) There were 33 trial dates between May 2014 and May 2018 concerning the applicant and numerous co-accused. The applicant appeared at 9 of them.

    ii) The applicant was initially subject to restrictions from leaving the country. These were lifted on 29 April 2015. By 2016 he had given evidence in his trial. In evidence at the court below he said that thereafter he understood he was no longer required to attend in person and came to the UK permanently to better support his family.

    iii) The Further Information showed that a new judge was appointed, and the trial started again in September 2018. There were a further 21 trial dates which the applicant did not attend. He said this was because he understood he would be represented by his lawyer. The FI states that Ms Winkler only attended 3 of those 21 days.

41. The judge misrepresented the applicant's evidence in finding that it was not believable that someone would instruct a lawyer to continue to represent them, so they need not attend and then when informed that they were not attending on their behalf and had no contact they did nothing in order to rectify that situation. His evidence was that he did not become aware that his lawyer was not attending until after the trial concluded.

42. It is plain from the respondent's evidence that the applicant instructed a lawyer to attend the trial on his behalf and that she failed to attend court more often than not. It is not known which days she attended. The respondent could not therefore prove beyond reasonable doubt that the applicant absented himself deliberately. Rather, he absented himself on the basis that he would be represented. Had he known that was not the case he would have attended in person or instructed another lawyer to represent him.

43. It is not clear how the applicant was supposed to know the dates he was required to attend. It was unchallenged evidence below that he expected to be told when he was required. If he had not been told it is difficult to see how he could be knowingly absent.

Ground 2 – Article 8 rights

44. Whether or not the applicant was a fugitive was a relevant factor in the balancing exercise that the judge had to perform in determining whether or not extradition would be a disproportionate interference with the Article 8 rights of the applicant and his family.

45. Mr Boswell submits that the judge was wrong to find that the applicant was a fugitive. She could not be sure on the evidence that he was. Mr Boswell relies in particular upon the following facts with which, he submits, the judge did not deal at all in her judgment:

i) First that the applicant had been living openly in the UK since he moved here permanently in 2016. He renewed his Polish passport in 2021, thereby notifying the authorities of his address. He applied for pre-settled status in his own name which was granted in 2022. This was liable to prompt communication about him between the Home Office and the Polish authorities. In the UK the applicant had used his own name to obtain a national insurance number, register as self-employed, pay taxes, register with a GP and rent a property. If the applicant had been wanted to avoid justice, he would not have been inclined to live so openly in the UK.

ii) The applicant never received a summons to attend court following his conviction in Poland. The evidence was that a court summons was sent to the applicant's registered address following his conviction in 2021. He was living in the UK from 2016 onwards. The fact that the summons was deemed served by operation of Polish law does not change the reality that the applicant never received the summons. The applicant's evidence was that the address he gave had been demolished in 2017 or 2018 and he had informed the court of his new address. This evidence was not accepted by the respondent but nor did the respondent adduce any evidence to the contrary.

iii) The judge was wrong to find that a lifting of the ban on the applicant leaving the country is the same as the court giving its express consent for him to do so. He was not unreasonable or wrong in believing that the lifting of the ban amounted to permission to leave the country. There was no obligation on him to remain in Poland and remaining in a country of lawful residence does not mean that the applicant was evading arrest or acting as a fugitive.

iv) When the applicant learnt of the AW, he immediately handed himself into the police. This was the opposite of avoiding justice and sufficient to at the least cast doubt on whether the applicant was a fugitive.

46. It is submitted that the above facts render any decision that the applicant was a fugitive beyond reason. Had the judge taken account of these factors it would have weighed heavily against a finding of fugitivity.

47. If the applicant was not a fugitive the District Judge would then have considered the question of delay differently. There was culpable delay in this case as the Polish authorities knew the applicant was in the UK and he could have been arrested sooner. In any event the question of delay would have had greater weight had the applicant not been found to be a fugitive. The offending was 16 years ago. The case took 8 years from indictment to conviction.

48. It is not the most serious of extradition offences. The applicant has been convicted of defrauding a bank. It is not a violent offence and was not committed against an individual. It is not an economic offence of exceedingly high value.

49. The District Judge was wrong to find that extradition was not a disproportionate interference with the applicant's Article 8 rights. He has been in the UK for eight years and built a life here. His wife, four children and five grandchildren live here. They all consider the UK to be their home. They are a close-knit and inter-dependent family. The applicant's wife was particularly distressed when he was in custody before being

granted bail. She works as a cleaner but cannot drive and depends on the applicant to take her to and from work. There would thus be a financial consequence to the applicant's extradition. The applicant has health issues as does his wife.

50. The District Judge further failed to have any regard to the applicant's immigration status when considering the Article 8 submissions. It is not certain that, were he to be extradited to Poland, he would be entitled to return after serving any sentence of imprisonment.

The Respondent

Ground 1 – deliberate absence

51. There is no dispute in this case that the applicant instructed a lawyer to represent him at his trial. *Cretu* is authority for the proposition that a requested person who mandates a lawyer to attend trial is not deliberately absent therefrom. *Bertino* expressly endorsed *Cretu.* This is a complete answer to this point and would have justified a finding under section 20(1) of the Act, that the applicant was convicted in his presence.

52. The fact that the lawyer only attended 3 days of the second set of proceedings is irrelevant. The conduct of the defence is a matter for the defendant and his legal team. It is not for the Judicial Authority to enquire as to the contact that a defendant has with his lawyers. There would be issues of privilege if such was attempted. On the facts of this case the applicant was notified about his trial. He knew the offences alleged against him. He had a lawyer who attended both trials. There could be a number of reasons why the lawyer did not attend every day. It would be wrong to assume that Polish trials proceed in the same way as those in the UK and it could be for any number of reasons. It is not for this court to go behind what happened in Poland.

53. In the alternative the applicant absented himself halfway through his trial The District Judge was entitled to disbelieve his evidence about his involvement.

54. Second or alternatively the District Judge was correct to find that the applicant deliberately absented himself from his trial. There was ample evidence to that effect. He had express knowledge of notification requirements. He attended the trial on several occasions and knew therefore at the outset that proceedings were ongoing, and he must have received some summonses or information about the court hearings. As such he was informed of the charge against him. He instructed a lawyer to act on his behalf. On his evidence when he discovered that his lawyer had not attended some hearings, he did not properly seek to rectify the position thus being aware that his trial continued. The judge was entitled to reject his evidence that he made a few telephone calls to the respondent. Even if he had this could properly be seen as doing nothing when subject to serious ongoing criminal proceedings. Further the applicant failed to notify an up-to-date address when he came to the UK.

55. The method of summonses deployed in this case was not a legal fiction. The applicant knew he had been charged and the date and place of trial and that proceedings may continue in absence. What he did from there was a matter for him.

Ground 2 – Article 8 rights

56. The District Judge was entitled to conclude that the applicant was a fugitive for the reasons she gave. These were that he was subject to notification requirements of which he was expressly informed and which he plainly breached by not updating his address when he left Poland for the UK. He had attended hearings in his case and knew that his trial was ongoing. The judge found him to be somewhat evasive in his evidence and did not believe the account given. The applicant's knowledge when leaving Poland was buttressed by his behaviour once in the UK. He did not engage with ongoing proceedings before the respondent, he did not remain in contact with his lawyer and did not seek information about the outcome of his case.

57. The fact that the applicant applied for pre-settled status and lived an open life whilst in the UK is relevant to knowledge however what really matters is his state of mind when he left Poland. As Burnett LJ (as he then was) said in *RT v The Circuit Court in Tarnobrzeg, Poland* [2017] EWHC 1978 (Admin):

> *"it is a frequent submission that someone has been living in the UK openly, often having had contact with various official bodies here but neither the 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"*

58. The term "fugitive" has a particular meaning in extradition law. Its usage is different from that in common parlance which invokes "lying low". As explained in *Wisniewski v Regional Court of Wroclaw, Poland* [2016] EWHC 386 (Admin) the term refers to the fact that, notwithstanding any additional motives, the requested person left the requesting jurisdiction when he knew of on-going criminal proceedings and thus placed himself beyond the prosecution process.

59. Many people hand themselves in when learning of a warrant for their arrest for extradition proceedings. This may be because they are more likely to be admitted to bail if they do so. It has no bearing on whether someone had the requisite state of mind when they left the requesting state to make them a fugitive.

60. When considering the question of the applicant's Article 8 rights, the District Judge followed the correct approach as set out in *Celinski.* She set out the evidence in detail, made findings of fact thereon, giving rational reasons for her evaluation, she set out the legal principles before detailing the factors for and against extradition.

61. The applicant's submissions are a mere rehearsal of what was advanced before the District Judge below. The applicant's real challenge is to the weight that the District Judge afforded to the family evidence. This was properly considered in the balancing exercise against extradition. That is true of all of the applicant and his family's personal circumstances.

62. It is accepted that, following Brexit, the applicant's re-entry into the UK will be more difficult given his immigration status. The applicant has however failed to demonstrate that this cannot happen.

63. The District Judge was entitled to conclude that the offending was persistent and serious. This is demonstrated by the loss incurred and the sentence imposed. In any event, the principle of mutual recognition means that the English courts should not look behind a sentence imposed by a foreign court save in exceptional circumstances.

64. The District Judge did consider the passage of time since the offending. However, given that she found the applicant to be a fugitive, she concluded that the time since the commission of the offence did not diminish the public interest in extradition to a large extent. For reasons already stated, the District Judge was entitled to find the applicant to be a fugitive meaning far less emphasis is placed on the passage of time and delay.

Discussion and conclusion.

Ground 1 - Deliberate absence from trial.

65. I do not consider it reasonably arguable that the District Judge was wrong to find that the applicant was deliberately absent from his trial. The applicant was aware of the charges against him and had signed a document to acknowledge that he was required to appear whenever summonsed and to notify any change of address. The judge, who heard him give evidence, was entitled to reject his evidence that he had notified any change of his Polish address to the authorities. It is clear from the AW and the further information that the applicant had provided only one address, and the summonses were sent to that address. Although entitled to leave Poland and come to the UK, he provided no UK address to the authorities.

66. I consider, following *Cretu,* there is force in the respondent's submissions that the applicant was in fact present at his trial as he was represented by a lawyer. True it is that the applicant's lawyer only attended 3 days out of 21 in the second trial but in my view that does not of itself cast doubt on the assertion that the applicant was absent from his trial. I agree with the respondent that it is not for the Judicial Authority to enquire as to contact that the applicant has with his lawyers. Issues of privilege would inevitable arise should they try to do so. There could be any number of reasons why the applicant's lawyer only attended for 3 days.

67. In any event, the applicant was plainly aware of his trial. I agree with the respondent that there was ample evidence to that effect. He had express knowledge of notification requirements. He attended the trial on several occasions and knew therefore at the outset that proceedings were ongoing, and he must have received some summonses or information about the court hearings. As such he was informed of the charge against him. He instructed a lawyer to act on his behalf. On his evidence, as summarised by the District Judge, when he discovered that his lawyer had not attended some hearings, he did not properly seek to rectify the position, thus being aware that his trial continued.

68. It follows that leave to appeal is refused on this ground.

Ground 2 – Article 8 rights

69. The District Judge was entitled, in my view, to find on the evidence that the applicant is a fugitive. It is not reasonably arguable that he was not.

70. Important in this regard is the definition of fugitivity within an extradition context. As submitted by the respondent, its usage is different from that in common parlance which invokes "lying low". As explained in *Wisniewski v Regional Court of Wroclaw, Poland,* the term refers to the fact that, notwithstanding any additional motives, the requested person left the requesting jurisdiction when he knew of on-going criminal proceedings and thus placed himself beyond the prosecution process.

71. As I have already said, the applicant signed a document to acknowledge that he was required to attend court when summonsed and to notify any change of address. At the time he left Poland he was entitled so to do but that did not absolve him of this obligation to notify the authorities of his change of address. He came to the UK in 2016 when the trial was still ongoing. On his own evidence his lawyer stopped contacting him in 2017. The District Judge, who heard his evidence, was entitled to find him evasive. She was entitled to find that, even if what he said was true, it was remarkable that he did nothing further in terms of notifying the court or contacting a new solicitor.

72. The District Judge's findings that when the applicant came to the UK, he knew that his trial was ongoing, knew there was a possibility that he would be convicted and knew that if he was convicted there would be a sentence to serve were self-evidently justified. The additional factors that he failed to give an updated address, made no efforts to engage with the trial, to establish its outcome or surrender to prison entitled the judge to make the finding that he was a fugitive.

73. The District Judge did not, in her judgment, address the arguments presented by the applicant about him inter alia living openly in the UK, applying to renew his passport and voluntarily attending the police station when he discovered the existence of the AW. These features were evidence in the case and relevant to the issue of knowledge. I do not, however, consider that, had she addressed them, it is reasonably arguable that the result would have been different. Burnett LJ's observations in *Tarnobrzeg* are apposite in this regard. The question of fugitivity turns on the applicant's state of mind when he left Poland. His knowledge when leaving Poland was buttressed by his behaviour once in the UK. He did not engage with ongoing proceedings before the respondent, he did not remain in contact with his lawyer and did not seek information about the outcome of his case. The judge, who had the benefit of seeing the applicant give evidence, was entitled to find him a fugitive.

74. I am further unpersuaded that the District Judge was arguably wrong in finding that extradition would not cause a disproportionate interference with the Article 8 rights of the applicant and his family. She conducted the balancing exercise required of her by *Celinski*. She took account of the correct factors in favour of extradition and cannot in my view be properly criticised for finding that the offending was persistent and serious. The judge considered all bar one (to which I will come) of the factors relied upon in this appeal by the applicant against extradition. This includes delay. However, the fact that the applicant was found to be a fugitive places far less emphasis on any delay.

75. The one factor against extradition that was not addressed in the judgment of the District Judge concerns the applicant's immigration status and his ability to return to the UK once any sentence is served. I am not however persuaded that her decision would have been different had she done so. It is accepted that, following Brexit, the applicant's re-entry into the UK will be more difficult given his immigration status. The applicant has however failed to demonstrate that this cannot happen. In my view the factors in favour of extradition strongly outweighed those against in this case. The District Judge was not only entitled but also, in my view, right to conclude that the impact on the applicant and his family were not such as to outweigh the public interest in extradition. The applicant's immigration status does not weigh so heavily as to tip the balance against extradition.

76. It follows that leave to appeal on this ground is also refused.