Neutral Citation Number: [2021] EWHC 2939 (Admin)

Case No: CO/4838/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/11/2021

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between:

LUBOMIR RES	**Appellant**
- and –	
CITY COURT OF BRNO, CZECH REPUBLIC	**Respondent**

- -
- -

Jonathan Swain (instructed by **Taylor Rose MW**) for the **Appellant**
Tom Hoskins (instructed by **CPS**) for the **Respondent**

Hearing dates: 26 October 2021

- -

Approved Judgment

Mr Justice Julian Knowles:

Introduction

1. This is an appeal by the Appellant, Lubomir Res, against the decision of District Judge Godfrey on 21 December 2020 to order his extradition to the Czech Republic under s 21(3) of the Extradition Act 2003 (EA 2003). Permission to appeal was granted by Swift J on 26 March 2021 on two grounds, detailed below, and refused on a further ground, about which I need not say anymore.

2. The Appellant's extradition is sought pursuant to a European arrest warrant (EAW) issued on 8 February 2018. It is a conviction warrant, seeking the Appellant's extradition to serve a sentence of one year of imprisonment. That sentence was imposed for two offences of fraud, committed in 2013. The EAW states that the Appellant:

   a. On 14 and 17 June 2013 in Brno, with the intention of making a gain for himself, fraudulently obtained 14,000 Czech korunas from the complainant by falsely representing he was authorised to receive the funds as deposit for a rental flat, when he was not (the First Offence);

   b. Between 12 March and 14 June 2013 in Brno, with the intention of making a gain for himself, fraudulently obtained 50,000 Czech korunas through a series of payments from the complainant by falsely representing the funds would be used for a house purchase, which it was not (the Second Offence).

3. For reasons I will explain, as part of his argument Mr Swain attempted to downplay the seriousness of these offences by reference to the sterling equivalents of the sums involved. As I pointed out during the hearing, this is not a legitimate line of argument in relation to conviction warrants and should not be advanced absent some special circumstances. (Different considerations apply in relation to accusation warrants and the proportionality bar in s 21A(3) of the EA 2003: see Crim PR PD 50A.2 – 50A.5 and *Miraszewski v District Court in Torun, Poland* [2015] 1 WLR 3929.) Mr Swain's argument was specifically rejected by the then Lord Chief Justice in *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551, [13(ii)]:

> "13 Sixth in relation to conviction warrants:
>
> …
>
> (ii) Each member state is entitled to set its own sentencing regime and levels of sentence. Provided it is in accordance with the Convention, it is not for a UK judge to second guess that policy. The prevalence and significance of certain types of offending are matters for the requesting state and judiciary to decide; currency conversions may tell little of the real monetary value of items stolen or of sums defrauded. For example, if a state has a sentencing regime under which suspended sentences are passed on conditions such as regular reporting and such a regime results in such sentences being passed much more readily than the UK, then a court in the UK should respect the importance to courts in

> that state of seeking to enforce non-compliance with the terms of a suspended sentence."

4. The Appellant's sentence was initially suspended for a period of thirty-six months, and was activated on 9 July 2015. The sentence was activated because the Appellant was found by the Czech court to have committed an offence of assault during the suspension period, of which he was not convicted, but which under Czech law resulted in the activation of his suspended sentence.

5. The Appellant appealed the decision to activate his sentence, however his appeal was finally dismissed in December 2016. The Czech warrant of committal which allowed for the enforcement of the sentence was issued in January 2017. The parties did not agree which of these dates was the date when the Appellant became unlawfully at large for the purposes of s 14 of the EA 2003, but nothing turns on the exact date for the purposes of this appeal, given their relative contemporaneity.

6. The EAW was issued on 8 February 2018, and was certified by the NCA under s 1 of the EA 2003 on 1 May 2020. The Appellant was arrested on 7 September 2020 at a residential address in London.

The decision of the District Judge

7. The two extradition bars which the Appellant relied on before the District Judge and which feature in this appeal are the bars under s 14 and s 21 read with Article 8 of the European Convention on Human Rights (the Convention).

8. Section 14 provides:

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

9. Section 21 provides:

> "21 Person unlawfully at large: human rights
>
> (1) If the judge is required to proceed under this section (by virtue of section 20 he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998.

> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
>
> (3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.
>
> (4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the category 1 territory.
>
> (5) If the person is remanded in custody, the appropriate judge may later grant bail."

10. Article 8 provides:

> "Right to respect for private and family life
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

11. I will set out the relevant principles in relation to these bars later, but for now it is sufficient to note that an extradition defendant who is found to be a fugitive from the requesting state is not entitled to rely on the passage of time under s 14, because s/he is regarded as responsible for the delay and so cannot be permitted to take advantage of it unless there are exceptional reasons. This principle goes back to at least the speech of Lord Diplock in *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, 782-783, in relation to s 8 of the Fugitive Offenders Act 1967 (similar to s 14). His Lordship said:

> "Delay in the commencement or conduct of extradition proceedings which is brought about by the accused himself by fleeing the country, concealing his whereabouts or evading arrest cannot, in my view, be relied upon as a ground for holding it to be either unjust or oppressive to return him. Any difficulties that he may encounter in the conduct of his defence in consequence of the delay due to such causes are of his own choice and making. Save in the most exceptional circumstances it would be neither unjust nor oppressive that he should be required to accept them."

12. More recently, in *Gomes and Goodyer v Trinidad and Tobago* [2009] 1 WLR 1038, [26]-[27], Lord Brown said:

> "26 … If an accused like Goodyer deliberately flees the jurisdiction in which he has been bailed to appear, it simply does not lie in his mouth to suggest that the requesting state should share responsibility for the ensuing delay in bringing him to justice because of some subsequent supposed fault on their part …
>
> 27. There are sound reasons for such an approach. Foremost amongst them is to minimise the incentive on the accused to flee. There is always the possibility, often a strong possibility, that the requesting state, for want of resources or whatever other reason, may be dilatory in seeking a fugitive's return. If it were then open to the fugitive to pray in aid such events as occurred during the ensuing years - for example, the disappearance of witnesses or the establishment of close-knit relationships - it would tend rather to encourage flight than, as must be the policy of the law, to discourage it …"

13. In this case the District Judge found that the Appellant was a fugitive. He did so on the basis that the Appellant had intentionally left the Czech Republic knowing about the potential for his suspended fraud sentence to be activated because of the assault.

14. The relevant paragraphs of his judgment are at [23] onwards. The Appellant said in evidence that he had been unaware of the activation of the suspended sentence until his arrest on the EAW, and that he knew nothing of any assault allegation until the present proceedings. In cross-examination, he accepted the dishonesty offences and that he was aware of the suspended sentences at the time that they were imposed and that in January or February 2014 he knew he had a 12-month sentence suspended for 36 months. He maintained that he did not recall assaulting anyone and, again, that he had only found out about the activation of the sentence during these extradition proceedings. He said that he had last been in the Czech Republic at Christmas 2014, but denied the suggestion that his failure to go there since then had been because of the activation of his suspended sentence.

15. At [29]-[30] the judge found as follows:

> "29. I did not believe the RP [ie, the Appellant] when he asserted that he was unaware of any assault or proceedings relating to the same. He did not advance his claims of ignorance in the strongest terms when challenged in cross examination. In any event, they were made in the face of the Further Information which says unequivocally that by a ruling dated 9 July 2015, "it was decided that Lubomir Res must serve the prison sentence imposed on him under Ref. No. 92 T 210/2013, since during the set probationary period he committed an offence consisting in an assault against another person." Having regard to the principal of mutual trust and respect between EU member states, I find that I should accept this from the JA. This information has been provided by the City Court in Brno. It is doubtless based upon official records. There is no reason for me to go behind what is contained in the Further

> Information because the RP says he does not recall, or is not aware, of it. Furthermore, I find the fact that the RP has not returned to the Czech Republic since December 2014, making it necessary for his unwell wife and his daughter to travel to see him, tends to support the JA's case.
>
> 30. Mr Swain pointed out, in the course of his written and oral submissions, that I have not been provided with any information about his client's arrest, questioning, summons, court hearing or conviction with regards to the assault. The assault does not appear on the international list of convictions ('ILOC') in respect of the RP. The lack of such detail and the absence of a relevant entry on the ILOC does not detract from what I have said above about the principal of mutual trust. I bear in mind too that the JA is not seeking the RP's extradition for the assault offence. I have sufficient details concerning the extradition offences.

16. At [31] onwards under the heading 'Fugitivity' the judge said:

> "It follows that the RP left the Czech Republic after committing the assault, but before the suspended sentence of 6 January 2014 was activated. Activation was ordered on 9 July 2015. The RP says he came to England on 6 September 2014. This is not disputed by the JA. Further, the RP has exhibited correspondence to him from the DWP concerning his application for a national insurance number. This correspondence is dated 16 October 2014 and so demonstrates he was seeking to settle here by that date. The suspended sentence was in force at the time the RP came to the UK. The assault evidently took place at some point between 6 January 2014 and 9 July 2015. It may have occurred before or after the RP's week-long visit to the Czech Republic in December 2014. Either way, when the RP left the Czech Republic for the UK either on 6 September 2014 or following the December 2014 visit – without telling the Czech judicial or prosecution authorities (which is undisputed) – he was leaving in the knowledge that he was subject to a suspended sentence liable to be activated if he committed a further offence and, as I have found, in the knowledge that he had committed a further offence. In these circumstances, I find that the RP's status as a fugitive has been proved to the criminal standard."

17. At [21]-[22] and [32], the judge noted the fact that since coming to the UK the Appellant, having arrived with very little money and being homeless for a time, had lived openly, obtained a job and worked his way up to being a chef with a well-known restaurant chain, paid tax and NI etc, and also obtained a new passport via the Czech Embassy, with whom he had corresponded. The Appellant has a wife and a daughter who live in the Czech Republic and to whom he sends most of the money that he earns. The judge concluded at [32]:

> "32. … It is submitted that all this is inconsistent with the actions of a fugitive. I cannot accept that submission. The reality is that the RP has knowingly risked discovery as a fugitive since he came to the UK. In 2019, when he entered into discussions with his consulate about a passport, he was taking a further risk but doing so from a position in which he had to get an identity document to keep his job, as he told the consulate. He also told the consulate, I do not intend to travel back to the Czech Republic in the foreseeable future …"

18. The judge therefore went on to hold, in accordance with the principles I set out earlier, that the Appellant was not entitled to rely on the bar in s 14 (at [35]).

19. In relation to s 21 and Article 8, the judge carried out the required 'check-list' approach required by *Celinski*, supra, of the factors weighing for and against extradition. One of the factors in favour of extradition, he found, was that the Appellant was a fugitive (at [44(ii)]). Whilst the judge rightly did not conclude that being a fugitive debarred the Appellant from relying on Article 8, as it does s 14 (cf *Udriste v Court of Trieste (Italy)* [2021] EWHC 2476 (Admin), [31]), overall, he found that the factors in favour of extradition outweighed the factors against it, and held accordingly that extradition would not be incompatible with the Appellant's rights under Article 8(1) of the Convention.

Grounds of appeal

20. For present purposes the relevant part of s 27 of the EA 2003 provides:

> "27 Court's powers on appeal under section 26
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> (1) On an appeal under section 26 the High Court may -
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> (a) allow the appeal;
> (b) dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> (3) The conditions are that -
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge."

21. On behalf of the Appellant, Mr Swain's two grounds of appeal were that the judge should have answered the questions in relation to: (a) s 14; and (b) s 21/Article 8 differently, and that, had he done so, he would have been bound to have ordered the Appellant's discharge.

22. The foundation for Mr Swain's argument (and the basis upon which permission was granted by Swift J) is that the judge had been wrong to conclude on the evidence before him that the Appellant was a fugitive. Mr Swain said this error fatally infected the judge's reasoning, and that had he found the Appellant not to be a fugitive, he would have found one or other (or both) of the bars to have been made out.

23. Mr Swain submitted the evidence showed that once the Appellant had been sentenced to his suspended sentence, he had not been under any restriction as to where he went or where he lived and that it had not been a breach of the conditions of his suspended sentence for him to have travelled to the UK and settled here. He said there was no evidence - and in particular, nothing in the Further Information supplied by the Respondent following enquiries by the CPS - that he had ever been made aware of potential proceedings concerning the assault allegation, for example, by being arrested, questioned or summonsed in relation to it. In short, Mr Swain said there was no evidence, or certainly no sufficient evidence, that the Appellant had ever put himself beyond the reach of the Czech authorities in an effort to escape the consequence of the activation of his suspended sentence, and therefore that the judge's finding of fact was unsustainable.

24. Mr Swain also criticised the judge's finding that the Appellant was aware of the assault proceedings against him in the Czech Republic, saying that the Appellant had not 'advanced his claims of ignorance in the strongest terms' ([29]). Mr Swain said this was at odds with the recorded evidence at [26], where he noted that the Appellant had denied explicitly that any knowledge of proceedings.

25. He also criticised the judge's finding that the purported assault 'may have occurred before or after' the Appellant was in the Czech Republic in December 2014 and said 'may' was inconsistent with the Respondent having to prove fugitivity to the criminal standard.

26. On the question of oppression (which means hardship arising from changes in the defendant's circumstances that have occurred during the period to be taken into consideration; see *Kakis*, supra, p782-3), Mr Swain said these offences were 'eight years stale'. There had been considerable delay in the issuing and execution of the EAW. During the relevant period the Appellant had lived a blameless life here, established a settled life and job, and supported his family financially. He pointed to evidence of a worsening of the Appellant's wife's physical and mental health in recent times. Mr Swain also sought to downplay the seriousness of the offences however, as I have said, this argument was not a legitimate one.

27. On Article 8, Mr Swain relied on what he said was the judge's error regarding fugitivity, and he also said that the judge had been wrong to imply, as part of his *Celinksi* calculus, that the Appellant had been convicted of a further offence when that was not the case.

28. On behalf of the Respondent, Mr Hoskins submitted that the judge had been entitled to, and was correct to, have found that the Appellant was a fugitive. He said the Further Information from the Respondent (which I will return to) bore out this conclusion and that the judge, having heard the Appellant give evidence and be cross-

examined, had been entitled to reject his evidence that he had been unaware of the assault allegation when he left the Czech Republic for the UK. Mr Hoskins said that all that needed to be proved to establish that the Appellant was a fugitive was that he had left the Czech Republic at a time when he knew that his suspended sentence *might* be activated as a result of the assault allegation, not that it had been activated, or even that proceedings to activate it had commenced. He therefore said that there was no basis to criticise the judge's analysis and conclusions on s 14 and Article 8, which had been correct.

29. In any event (and this was a point made by Swift J when granting leave), Mr Hoskins said that even if the judge had been wrong on his conclusion as to fugitivity, the Appellant had not surmounted the high hurdle of establishing oppression for the purposes of s 14, and nor had he, for the purposes of Article 8, demonstrated the particularly severe hardship necessary to outweigh the factors in favour of extradition (in particular, the importance of this country honouring its extradition obligations) .

Discussion

30. I begin with the question whether the judge was right to find that the Appellant was a fugitive. It was common ground and, in any event, it is clear on high authority, that this was a matter for the judicial authority seeking extradition to prove to the criminal standard.

31. In *Wisniewski v. Regional Court of Wroclaw, Poland* [2016] 1 WLR 3750, the Divisional Court considered fugitivity. Lloyd Jones LJ (as he then was) said at [58]-[62]:

> "58. 'Fugitive' is not a statutory term but a concept developed in the case law, in particular in *Gomes's* case [2009] 1 WLR 1038 which elaborates the principle stated in *Kakis's* case [1978] 1 WLR 779. In the context of Part 1 of the 2003 Act it describes a status which precludes reliance on the passage of time under section 14. Before this rule can apply, a person's status as a fugitive must be established to the criminal standard: *Gomes's* case, para 27.
>
> 59. On behalf of the appellants, Mr Jones submits that in the passage in his speech in *Kakis's* case referred to in *Gomes's* case as Diplock para 1, Lord Diplock was limiting the concept of a fugitive to cases where the person had fled the country, concealing his whereabouts or evading arrest. However, I consider that these were merely examples of a more general principle underlying *Kakis's* and *Gomes's* cases. Where a person has knowingly placed himself beyond the reach of a legal process he cannot invoke the passage of time resulting from such conduct on his part to support the existence of a statutory bar to extradition. Rather than seeking to provide a comprehensive definition of a fugitive for this purpose, it is likely to be more fruitful to consider the applicability of this principle on a case by case basis. Similarly, a process of sub-categorisation involving

> ‘quasi-fugitives’ and ‘fugitives not in the classic sense’ is unlikely to be helpful.
>
> 60. I consider that a person subject to a suspended sentence who voluntarily leaves the jurisdiction in question, thereby knowingly preventing himself from performing the obligations of that sentence, and in the knowledge that the sentence may as a result be implemented, cannot rely on passage of time resulting from his absence from the jurisdiction as a statutory bar to extradition if the sentence is, as a result, subsequently activated. The activation of the sentence is the risk to which the person has knowingly exposed himself. In my view, such a situation falls firmly within the fugitive principle enunciated in *Kakis* and *Gomes and Goodyer*. 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.
>
> …
>
> 62. … I have come to the firm view that the approach of Ouseley J in *Salbut*, that is correct on this point and should be followed. It is not necessary, in order that a requested person be treated as a fugitive, that he knows that his sentence has been activated. It is enough that he knows that it is liable to be activated because of his breach of the terms of its suspension. Any other approach would be inconsistent with the principle in *Kakis* and in *Gomes and Goodyer* and would introduce considerable uncertainty into this area of the law.”

32. In a helpful passage in *Makowska v Regional Court, Torun, Poland (No 1)* [2020] EWHC 2371 (Admin), [27]-[28], Fordham J summarised the principles on fugitivity as follows:

> “27. … The principle as to whether the person is a ‘fugitive’ having ‘knowingly placed [herself] beyond the reach of a legal process’ is one of contextual application and falls to be applied ‘on a case by case basis’ (*Wisniewski* paragraph 59). This is in law a distinct question from whether, and requires more than that, the person has been ‘unlawfully at large’ (as to which see *Wisniewski* at paragraphs 51-57). The function and purpose of the principle is that any lapse of time or consequences of lapse of time so far as extradition is concerned is a consequence of the persons ‘own choice and making’ (see *Kakis* at 783B), so that any delay "in the commencement or conduct of extradition proceedings" can be said to have been ‘brought about by’ the person themselves (see *Kakis* at 783A). Lord Diplock's exposition (in *Kakis* at 783A, endorsed in *Gomes*) spoke of the conduct of a person ‘by fleeing the country, concealing his whereabouts or evading arrest’. The description of a person having ‘knowingly placed [herself] beyond the reach of a legal process’ (*Wisniewski*

> at paragraph 59) includes a person who breaches the obligations of a suspended sentence (a) by a voluntary act of leaving the jurisdiction in question thereby knowingly preventing themselves from performing those obligations (see *Wisniewski* paragraph 60) or (b) by a voluntary act of ceasing to keep in contact with the authorities thereby becoming a person whose whereabouts are unknown to the authority which is entitled to know of them, putting it beyond that authority's power to deal with the person (see *Wisniewski* paragraph 62).
>
> 28. In grappling with the idea of fugitivity, expressed in the authorities which were cited and to which I have referred, I have found it helpful to think in particular about the following three linked themes: (i) locational dynamism; (ii) informational deficit; and (iii) intended consequential elusiveness. That is not to say that these are elements of a litmus test; nor that all three themes can be expected to be present. A person whose location changes, with a lack of information, becoming elusiveness can be seen as a paradigm case of a fugitive. These themes, or some of them at least, can be seen to be met by each of the following situations: a person who flees the country; a person who conceals their whereabouts; a person who evades arrest; a person whose act of leaving a country knowingly prevents themselves from performing obligations; a person who ceases contact with authorities so as to become a person whose whereabouts are unknown to those authorities and cannot be dealt with by those authorities; a person whose actions are the cause of any delays in their pursuit by the authorities. These themes, as it seems to me, reflect the ordinary and natural meaning of the word 'fugitive'. They link directly to the underlying idea of extradition delays being consequential upon the individual's own choices, with what are, in effect, penalising consequences for the individual in an analysis of the extradition circumstances, under the law."

33. In this case, the Further Information from the judicial authority stated as follows: (a) that the sentence for the fraud offences had been activated by a ruling of a court in Brno on 9 July 2015, which had become final on 13 December 2016; (b) that all of the Appellant's rights had been observed during the process; (c) that the Appellant had 'evaded the criminal proceedings during its progression'; (d) that the ruling on 9 July 2015 had not been delivered to the Appellant 'since he had become unreachable'; (e) 'therefore it was evident to him that, after he had committed an offence during the probationary period, he was endangered with the decision that he would have to serve the imposed prison sentence and despite this fact he became unreachable'; (f) that he had not been subject to any restrictions on his movements or place of residence, but that without communicating his valid contact address, etc, 'he became unreachable for the court in the situation, when it was evident he was endangered with the decision that he would have to serve the imposed prison sentence.'

34. Three preliminary points need to be made: (a) the judge was bound to accept that a Czech court had found that the Appellant had indeed committed an assault, whether or

not a criminal conviction had resulted; (b) he was also bound to accept at face value the assertions made in the Further Information about how the Appellant had behaved; (c) this Court, as an appellate court, should defer to the District Judge's assessment of credibility in the absence of a clear and plain error, because he heard live evidence.

35. This Further Information, it seems to me, coupled with the judge's adverse finding on the Appellant's credibility about whether he knew of the assault allegation, was an ample basis for a finding to the criminal standard that the Appellant was a fugitive. That is because it clearly established that he had left the Czech Republic when he knew there was a possibility of his suspended sentence being activated and had failed to keep the court updated (whether or not he was legally obliged to do so, a point emphasised by Mr Swain). These matters, taken together, meant he had 'committed a voluntary act of ceasing to keep in contact with the authorities thereby becoming a person whose whereabouts are unknown to the authority which is entitled to know of them, putting it beyond that authority's power to deal with the person' (per *Makowska*, supra, [27]).

36. I therefore consider that the judge was right to hold that the Appellant was precluded from relying on s 14, and that there is no basis for impugning his Article 8 analysis because of a wrong conclusion on fugitivity.

37. But if I am wrong about that, I go on to consider s 14 and Article 8 on the basis that the Appellant was not a fugitive.

38. In relation to s 14 and oppression, the period in question in relation to which hardship has to be considered is the period from when the Appellant became unlawfully at large to the time when the matter is considered by the court. In this case, therefore, the relevant period runs from December 2016/January 2017 until December 2020, a period of about four years.

39. Mr Swain sought to suggest that there had been 'unexplained delay' on the part of the Czech judicial authority and/or the NCA which weighed in the Appellant's favour. I disagree. Whilst it is not to be commended, it is a fact that the period in this case is far from unusual in extradition cases. It is explicable purely on the basis that both agencies have finite resources and, no doubt, have many cases to prioritise and handle. No further explanation is or was called for. I readily accept that there can be extradition cases in which there are periods of delay or inactivity that are so striking or so long that they call for an explanation, in default of which an adverse inference may be drawn against the relevant authority which may operate to 'tip the balance' of s 14 oppression or Article 8(1) disproportionality in the defendant's favour. The decision of Blake J in *Slawonir Oreszczynsi v Krakow District Court, Poland* [2014] EWHC 4346 (Admin) is an example. In that case there had been a four-year delay between the EAW being certified by the NCA and it being executed, during which the NCA had not carried out even the most basic checks to establish the defendant's whereabouts, even though the NCA knew he was in the UK. But Blake J also made the point (at [8]) that in general it is not easy to draw the inference of culpable delay from the mere passage of time for a number of reasons, including that there are resource issues for any public authority dealing with a large number of applications, and the court will be in no position to know what priority should be given to the particular case. As I have said, that is the position with regard to the Appellant.

40. It is long established that the bar for oppression is a high one, requiring more than mere hardship. It is a hurdle that is not easily satisfied: *Gomes*, supra, [31]. Extradition by its nature always involves hardship to the defendant, and in many cases to his family as well. The burden rests upon the defendant to demonstrate that there exists injustice or oppression so as to bar extradition. A good deal more than the usual hardship that accompanies any extradition is required: *Obert v Public Prosecutors Office of Ioannina, Greece* [2017] EWHC 303 (Admin), [16].

41. Whilst I accept all that was said in connection with this by Mr Swain, and which was accepted by the judge, as to the Appellant's blameless life in the UK since he arrived here; the fact he has established himself in steady employment; that he has supported his family in the Czech Republic financially; and that his mental health has stabilised; and whilst I accept that extradition will impact adversely upon him and them, even accepting *ex hypothesi* that the Appellant is not a fugitive, I am unable to say that the hardship in this case rises to the level necessary to establish oppression for the purposes of s 14.

42. In relation to Article 8, the applicable principles are well-settled and well -known. In *Norris v Government of the United States of America (No 2)* [2010] 2 AC 487, [56], Lord Phillips said:

> "The reality is that it is only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves…..Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition".

43. In *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338, [8] and [30], Baroness Hale said:

> "(1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life.
>
> (2) There is no test of exceptionality in either context.
>
> (3) The question is always whether the interference with the private and family lives of the extradition and other members of his family is outweighed by the public interest in extradition.
>
> (4) There is a constant and weighty public interest in extradition that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the

> United Kingdom should honour its treaty obligations to other countries; and that there should be no 'safe havens' to which either can flee in the belief that they will not be sent back.
>
> (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved.
>
> (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life.
>
> (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe …
>
> … the court would be well advised to adopt the same structured approach to an article 8 case as would be applied by the Strasbourg Court. First, it asks whether there is or will be an interference with the right to respect for private and family life. Second, it asks whether that interference is in accordance with the law and pursues one or more of the legitimate aims within those listed in article 8.2. Third, it asks whether the interference is 'necessary in a democratic society" in the sense of being a proportionate response to that legitimate aim. In answering that all-important question it will weigh the nature and gravity of the interference against the importance of the aims pursued. In other words, the balancing exercise is the same in each context: what may differ are the nature and weight of the interests to be put into each side of the scale.'

44. For essentially the same reasons as in relation to s 14, I am unable to determine that in this case there is any feature or consequence of extradition which will result in exceptionally severe consequences in terms either of the Appellant's private or family life. Even leaving out of account the fugitive factor, the judge's checklist approach and analysis in [44]-[46] of his judgment would still have led to the inevitable conclusion that extradition would not disproportionately interfere with his rights under Article 8(1) in a way which is disproportionate because, as the judge said at [46]:

> "46. … the delay in this case has not been particularly prolonged. The RP has no family life in the UK. His return to the Czech Republic will bring him nearer to his wife and child who currently reside there. His loss of employment in the UK will have a detrimental impact on them financially, but they have managed without his financial support before and the Czech state can be expected to provide financial assistance if the family cannot manage. Brexit uncertainty is of minimal weight since the RP would not be separated from family members in the UK as a

> result of his surrender. In any event, Brexit uncertainty is insufficient to defeat the imperative of extradition in this case, even in combination with other factors. Weighing up all the factors here, the impact of extradition will not be exceptionally severe on the RP or his family. The extradition of the RP will not disproportionately interfere with his or his family's right to respect for private and family life. It is compatible with the Convention rights."

45. It follows that this appeal is dismissed.