SHERIFFDOM OF LOTHIAN & BORDERS AT EDINBURGH
UNDER THE EXTRADITION ACT 2003

[2019] SC EDIN 43

E10/18

JUDGMENT OF SHERIFF FRANK RICHARD CROWE

in the cause

THE REGIONAL COURT IN BIELSKO-BIALA, POLAND

Pursuer

against

KAMIL TOMASZ CHARYSZYN whose domicile citation has been specified as an address in Glasgow

Defender

Pursuer: Richardson QC and Jajdelski Advocate; instructed by T Crosbie Solicitor for the Lord Advocate on behalf of the Polish Authorities
Defender: Mackintosh, Advocate; instructed by Dunne Defence, Solicitors Edinburgh

Edinburgh, 2 May 2019

[1] This is one of 2 "test cases" (the other being Patryk Michal Maciejec No E91/15 now reported at [2019] SC EDIN 37; [2019] 4 WLUK 449) which it was agreed would be dealt with to hear evidence and determine Article 6 challenges which were lodged in Polish extradition proceedings in the wake of concerns raised about new laws and procedures brought in by the Polish Government following their general election victory in 2015. This case was selected as it involves a number of different offences, some of the charges are at the accusation stage, while another is a conviction case with the potential of the requested person serving a sentence of imprisonment which may require to be served consecutively to any other prison sentences imposed.

[2] By the summer of 2018 and in the wake of "grave concerns" previously expressed in the report of 11 December 2017 by the Venice Commission, the body responsible for monitoring the rule of law for the European Union, that political changes in Poland put "at serious risk the independence of all parts of the Polish Judiciary", *The Reasoned Proposal in Accordance with Article 7(1) of the Treaty on European Union regarding the Rule of Law in Poland"* published by the European Commission on 20 December 2017 ("the Reasoned Proposal") and the decision by Mrs Justice Donnelly in the High Court of Ireland in *Minister of Justice & Equality* v *Celmer* [2018] IEHC 119 (Celmer No 1) which resulted in a reference to the Grand Chamber of the Court of Justice of the European Union on 25 July 2018, discussions took place among parties how to deal with this and all other Polish cases which may be affected by these developments.

Chronology

[3] Mr Charyszyn was accused of 3 offences and had been convicted of a fourth. These offences were all contained in a European Arrest Warrant (EAW) which had been issued by Judge Wojciech Paluch of the Regional Court in Bielsko-Biala, Poland on 4 December 2017. Charge 1 (in section E2 of the EAW) was a charge of opening lockfast places, namely a market stall on 23 or 24 November 2005 acting along with 2 others. The case references for this charge are No. 95/06 and for the appellate procedure (VII Ka 712/06). He was sentenced to 1 year's imprisonment of which a sentence of 250 days' imprisonment remains outstanding having been remanded from arrest on 5 December 2005 until trial on 29 March 2006.

[4] Charges 2 occurred on 23 November 2005 and involved a robbery while acting with 2 named accomplices. A sentence of between 2 and 12 years' imprisonment falls to be imposed if convicted.

[5] Charge 3 is alleged to have occurred the following day on 24 November 2005 and is a charge of threats while acting with another. This charge attracts a sentence of between 3 months and 5 years' imprisonment.

[6] The 4th charge occurred between 3 and 28 July 2008 and involves the theft of a number of items while in the course of employment. A sentence of between 3 months and 5 years' imprisonment may be served on conviction.

[7] Mr Charyszyn was convicted of charge 1 on 29 March 2006 at the District Court in Bielsko-Biala. Following an appeal by the prosecutor the case was transferred to the Regional Court. However Mr Charyszyn failed to appear at the appeals trial on 10 November 2006 although he was represented by a trainee lawyer Agata Biclawska on behalf of Andrzej Nastula, Attorney-at-Law.

[8] He failed to appear for trials on 12 July 2007, 27 August 2007 and 6 November 2007 and warrants were issued for his arrest (see Production No. 7), a chronology provided by the Polish court.

[9] Warrants in the accusation cases were obtained on 18 February 2009 and 14 August 2012 when it was assumed the Requested Person had left the jurisdiction, he having failed to report to prison on 11 December 2009 in respect of the conviction case. An EAW covering all matters was granted on 4 December 2017 and Mr Charyszyn was arrested on this warrant on 15 February 2018 when he was granted bail at Edinburgh Sheriff Court and has remained on bail throughout.

[10] A chronology was obtained from the Polish authorities dated 9 March 2018. It stated that the Requested Person moved out of the residence of his mother's husband Ryszard Duszyński at 43-365 Wilkowice, Karpacka (the address on his last identity card) nor did he stay with his mother in Lelewela Street in Bielsko-Biala.

[11] Following Mr Charyszyn's appearance at Edinburgh Sheriff Court on 15 February 2018 a Preliminary Hearing was fixed for 22 February 2018 with the Full Hearing scheduled for 1 March. In the event on 22 February 2018 the Full Hearing was postponed on defence motion for legal aid to be granted and a fresh date fixed for 29 March with a further Preliminary hearing scheduled for 22 March 2018.

[12] However legal aid was not yet in place and on 22 March fresh dates were fixed for 12 and 19 April 2018. On 12 April 2018 new dates were fixed to enable the defence further time to prepare. At a Preliminary Hearing on 3 May 2018 a devolution minute (Production No. 4) was lodged and the case was continued to a Notional Hearing on 31 May 2019 to await a response. This minute referred to the Venice Commission Opinion, the EC Reasoned Proposal and the decision by Ms Justice Donnelly in *The Minister for Justice and Equality* v *Celmer* [2018] IEHC 119 (*Celmer* No 1).

[13] On 31 May 2018 in light of Ms Justice Donnelly's decision to refer the *Celmer* case to the ECJ these proceedings were continued to await the outcome of that decision to a Notional Hearing on 26 July 2018. By that stage although the arguments had been heard by the Court of Justice the decision had still to be published. A further Notional Diet was fixed for 6 September 2018 and the defence was ordered to lodge a case and argument.

[14] I began to manage this case and others at a the Hearing which called on 6 September 2018 – a case and argument (Production No. 8) was tendered on Mr Charyszyn's behalf setting out Article 6 and 8 challenges and suggesting this Court required to follow the

procedure described in *Criminal Proceedings against LM* [2019] 1 WLR 1004; Grand Chamber 14 April , 1 and 28 June + 25 July 2018 (*LM* case) with reference to the "two stage" test set out in *Criminal Proceedings in Aranyosi & Câldâraru* [2016] QB 921; Grand Chamber 15 February, 3 March and 5 April 2016 (*Aranyosi*). A 3 day full hearing was envisaged and it was indicated that it might take 8 weeks to secure legal aid sanction to obtain witnesses who could give evidence about the situation in Poland at first hand.

[15] At this hearing the Crown tabled a Note of Submissions (Production No. 9) setting out the Lord Advocate's position on behalf of the Republic of Poland that in light of the *LM* case and the *Reasoned Proposal* it would be best to identify a small group of test cases from a list of 33 outstanding Polish EAWs at this time and this case was later identified as being suitable as it contained elements of accusation, conviction and potential multiple sentences of imprisonment.

[16] There are now at present 48 outstanding cases awaiting this decision. By contrast in England at an earlier stage in 2018, Polish extradition cases were referred to the Court of Appeal after other challenges had been dealt with and only Article 6 issues remained. A sample of cases were dealt with in *Lis, Lange and Chmielewski* v *the Regional Court in Warsaw, Zielona Gora Circuit Court and the Regional Court in Radom,* Poland [2018] EWHC 2848 (Admin) on 31 October 2018 (*Lis v Poland*). These proceedings which had been initiated in the wake of *Celmer no 1* were themselves delayed to await the decision in the *LM* case but the decision was not further delayed to await further information in the *Rechtbank* case (see para 18 below). The *Lis* case has been the subject of further proceedings (*Lis & Lange* v *Regional Court in Warsaw and Zielona Gora Circuit Court, Poland (No 2)* [2019] EWHC 674 (Admin)) and may be dealt with at some stage by the UK Supreme Court (see however para [93] below).

[17] It was agreed by parties on 6 September 2018 that I should adjourn the case and a new Preliminary Hearing took place on 8 November to set a timetable for further procedure. At that diet I was advised that on 19 October 2018 the Vice-President of the European Court had made an interim order against the Republic of Poland in relation to a law passed on the Supreme Court in Poland lowering the judicial retirement age from 70 to 65. (This was finalised on 15 November).

[18] The *Lis* v *Poland* decision was not yet readily available and the decision in a Dutch case decided on 4 October 2018 at the Rechtbank/District Court in Amsterdam was not available in an English translation (RK No 18/3804) but I was advised the court had requested further information from the Polish Authorities in light of the two stage process set out in the *LM* case about staffing changes and changes of procedure in the ordinary courts, rules regarding case allocation, judicial disciplinary proceedings, procedures available to the requested person to challenge and details of the extraordinary appellate procedures which had been introduced. The Crown opposed following this route in every outstanding case and I agreed the test cases should proceed as soon as possible in an attempt to clarify as many issues as possible which might determine the other cases one way or another. It was clear that matters were at a critical stage between the Republic of Poland and the EC. If the Council was to make a determination in accordance with Article 7(1) of the Treaty, there could be no further argument.

[19] At this hearing on 8 November, a Contempt of Court Order was made in terms of section 4(2) of the Contempt of Court Act 1981 restricting publication by prohibiting publication of the terms of discussions in the test cases until 18 March 2019 (Production No. 11). It was agreed that a further Preliminary Hearing would take place on 10 January 2019 to ascertain the preparation of parties and what stage the European Commission case v

Poland had reached. A Full Hearing was set for 18 March and successive days in that week. Meanwhile a Joint Case and Argument was lodged by the parties in the 2 "test" cases reflecting developments which had taken place in other jurisdictions (Production No. 10).

[20] In the interim I resolved that other Polish extradition cases should proceed to Full Hearings wherever possible to deal with non-Article 6 issues (as had been done in England & Wales). In the event two Requested Persons were discharged on other grounds and 3 cases remain part-heard to consider Article 6 challenges, other grounds having been dismissed. They await a decision in this and the other test case before their Hearings can be concluded.

[21] At the hearing on 10 January 2019 it was recognised events elsewhere had led to dynamic changes in the test case arguments. Following the Interim Order issued by the Vice-President of the ECJ on 19 October 2018 some Polish judges who had been dismissed had returned to work and new Polish laws tackling some of the EC criticisms had been promulgated and passed on 31 December 2018 but it was too early to gauge the effect of these changes. From a UK perspective it was not clear what would occur if Brexit took place on 29 March 2019 and whether existing EAW requests would be honoured. (See The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019 SI 2019 No 742).

[22] A Notional Hearing was fixed for 7 February 2019 to allow parties to finalise issues at the Full Hearing. On that date it was confirmed there would be no new challenges raised and final outline submissions and defence expert Professor Pech's report were being made available to the Crown in order that the Polish authorities might have sight of the issues raised and advise the Lord Advocate of their position. Final written submissions for the Defence would be lodged by 4 March 2019.

[23] In light of these considerations and practical ones to secure live links for evidence to be taken by CCTV a final Preliminary Hearing took place on 14 March 2019 when parties were able to agree most of the evidence thus enabling witnesses and most of the submissions to be heard the following week. What had been overlooked was to seek formal permission from the Polish Courts to take evidence from their nationals by live link in Poland for these proceedings. The necessary applications were made although late and I determined it would be best to proceed with the Full Hearing. Needless to say the Polish Courts later expressed their displeasure at this apparent discourtesy and I apologise for this, but I trust they will appreciate this court was endeavouring to make progress with a log-jam of cases from their jurisdiction which had built up over the previous 9 months (see Production No. 16).

[24] Arrangements were made to record and transcribe the evidence given by the expert witnesses in order that this could be made available to parties in future Polish Article 6 cases in the way deployed in *Her Majesty's Advocate representing the Republic of Lithuania* v *Evaldas Ivoškevičius* Edinburgh 14 January 2019, by my colleague Sheriff N McFadyen in relation to Lithuanian prison conditions.

The Full Hearing

[25] Parties had determined it would be best to start by way of making opening statements to set the scene as much of the background and the material which had been produced in a large volume by the defence (Production No. 14) was not in dispute; many of the documents were official ones. In the event this proved to be useful. Mr Mackintosh expanded upon the Final Outline Submissions (Production No. 12) and Mr Richardson for the Lord Advocate spoke to a Proposed Statement of Issues (Production No. 13) which

proved to be a helpful route map. The provenance of the defence documents 1-17 contained in Production No. 14 was agreed by Joint Minute (Production No. 15).

[26] It was agreed that the offences were extradition offences either in terms of section 64(3) of the Extradition Act 2003 in respect of the accusation offences at section E2 Nos. 2-4 of the EAW or under section 65(3) of the 2003 Act for charge 1. I answered the question posed in section 10 in the affirmative and moved to section 11 of the Act. Challenges were raised in relation to passage of time under section 11(1)(c) and section 14, section 20 – trial in absence and sections 21 & 21A – Convention rights.

The Defence Evidence

[27] Mr Charyszyn said that he had been living in Bielsko-Biala and pled guilty to breaking into a market stall on the night of 23/24 November 2005 and stealing goods worth about £1,000. He said that he faced other charges of a break in and threats (charges 2 & 3). The property stolen in charge 2 was worth about £380. He pled not guilty to charges 2 and 3 but guilty to charge 1 at trial and was released on 29 March 2006. He said he was sentenced to 3 years' imprisonment but did not go to the appeal nor did he contact his lawyers. (It was an appeal at the instance of the prosecutor according to the chronology Production No. 7) – (see also para [33] below).

[28] Mr Charyszyn lived with his father and sister at 11/30 Grazny in Bielsko-Biala but left there in 2009. He had a job wood working but developed a drug problem. When his son was born in December 2007 he managed to stop taking drugs. He left Poland and went to Glasgow where his cousin's mother lives and in March 2009 his partner and son joined them. He moved to Scotland provide a better life for his family. He said he never received any letters from the court advising him of dates for his trials.

[29] Mr Charyszyn said that he worked from 2009 to 2018 doing drainage and piping work and was not working at present as he did not have a valid identity card. His son has a Polish Identity card but his name did not appear on the application form as the boy's father. He helps collect the children from school while his partner works. His son is now 11 and he has a daughter now aged 7.

[30] Last year Mr Charyszyn became depressed and tried to commit suicide by cutting his throat and wrists. He regularly sees a psychiatrist, Dr Thomson, at Easterhouse Health Centre. He has been prescribed Fluoxetine x 100 mgs but would now be fit to work if he had an identity card. Mr Charyszyn confirmed that he had never been involved in political activities and was only 20 at the time of commission of the offences. He never kept in contact with his co-accused and cannot say if they were prosecuted.

[31] As regards charge 4 he said he was one of a number of persons working at a lady's house painting walls and carrying out electrical work. He had stolen items there valued at about £700.

[32] In cross examination he said that he had lived with his father after his parents separated. After 2006 he stayed at the house of an ex-partner of his mother's called Ryzard Duszyński. He said that he did not attend his appeal as he did not know the date and only found out about it when he read the EAW following his arrest in February 2018. He used Ryzard's address when applying for his identity card. He said he never received any letters from the court and had not been back to Poland since he left. His sister who lives in Poland comes over to visit him and his partner regularly visits her family in Poland.

[33] Later in the proceedings I allowed Mr Charyszyn to be recalled to give further evidence. He recalled that initially when he appeared in court charges 1-3 were together. He pled guilty to charge 1 and thought he was given a sentence of 1 year's imprisonment.

He pled not guilty to the other charges and remembered attending court subsequently but the complainer failed to appear and could not be found at that time. He was represented by his lawyer's assistant and recalls this happening in 2007 before he left Poland. He gave contradictory answers as to whether he knew of the sentence being reduced to 250 days. After that case he was spoken to by police when found drunk and incapable. This incident occurred in 2008 before his son was born.

[34] The next witness to give evidence was Ms Malgorzata Szuleka, a Polish lawyer who graduated in 2010 and since then has been employed at the Helsinki Foundation for Human Rights. This is a privately funded body which looks at the application of Human Rights in Poland. For the last 4 years she has looked after defendants' cases but assists in producing reports for the Foundation which cover the rule of law and the separation of powers. She is in training to become a member of the bar and hopes to qualify in 2021. Ms Szuleka co-authored the Report (Production No. 14 – document 11) published in February 2019 and interviewed about half of the judges and prosecutors in respect of whom disciplinary proceedings had been taken.

[35] Ms Szuleka said there had been numerous changes in the law in this context in Poland since 2015 which had all been part of an orchestrated plan. The new Government had dismissed the President and Vice-President of the Supreme Court and had made new appointments. A new Disciplinary Chamber of the Supreme Court had been formed and this had been more active in seeking to discipline judges. The Minister of Justice also acts as Prosecutor General and appoints Commissioners to investigate cases. The new system breached the Polish Constitution of 2 April 1997 by restricting freedom of speech, freedom of association and prohibited judges from having dual citizenship.

[36] A new code of Ethics was adopted by the National Council of the Judiciary (NCJ) in January 2017. Breaches of this code would result in disciplinary proceedings. Various cases are referred to in the Report at pages 6-9 in relation to judges and prosecutors many of whom were said to be involved in criticising Government policy. As a result of these initiatives many judges felt under pressure from the media, particularly from a television programme which "stigmatised and exaggerated every case of judicial misconduct" and criticism from politicians who accused them of being corrupt (see Production No. 14 – Document 11 page 9). The witness's research on the pressure felt by judges was still ongoing.

[37] Some of the disciplinary cases were said to be ridiculous such as the cases against 2 judges who had taken part in a moot court at a music festival where they had worn gowns and chains of office. After investigation by the disciplinary officer no further proceedings were taken on a complaint about their "lack of awareness of violating the law and judicial ethics" (see page 7 of the report). A complaint was still continuing against one of the judges for delay due to having 172 judgments outstanding. It was suggested by the witness that in some cases seemingly plausible complaints were made to undermine the work judges had carried out through their association criticising the changes and the lack of resources. Other judges although not affected by complaints nevertheless felt a "climate of fear" persisted which it was suggested might encourage them simply to toe the line. No more than 20 judicial candidates applied to become members of the NJC of which 15 were appointed by the *Sejm*.

[38] Ms Szuleka also co-authored another report by the Helsinki Foundation entitled "It Starts with the Personnel" published in April 2018 (Production No. 14 – Document 13) which dealt with the replacement of common court presidents and vice- presidents ie judges

at local first instance level. This followed upon the publication of proposals by the Ministry of Justice to carry out a 10 point plan to reform the justice system (see page 3). One of the planned goals of the reforms was a so-called democratisation of the method of appointing NJC members to make it "free from the corporate interests of the judicial community." One of the problems diagnosed was that "the choice of NJC members was in practice determined by the judicial elite". Bills were then passed by the *Sejm,* the lower chamber of the Polish Parliament, regarding the appointment of Assessors (trainee judges) and increasing the influence of the Ministry of Justice on appointments in the lower courts.

[39] Ms Szuleka said that despite criticisms in the Polish Government White Paper about the ineffectiveness of Polish Courts (see Production No. 14 – Document 3 para 6 page 10) almost every person interviewed in the Helsinki Foundation Personnel study pointed to inefficiency due to an insufficiency of judges caused by a freeze on appointments, the reduction in the judicial retirement age and organisational and efficiency problems within the Ministry of Justice. About 150 court presidents and vice-presidents were removed from office although in many cases there were no specific criteria. In some instances the reasons given were due to the ineffectiveness of the civil or criminal departments at a local court. Replacement judges were appointed as presidents and vice-presidents without going through any transparent process and some lacked the skills and experience necessary to do the job. One candidate who had previously been rejected many times for judicial appointment was suddenly appointed under the new regime.

[40] The witness's criticisms were that judicial appointments were made on a political basis, there was no effective mechanism to protect the independence of judges and the new disciplinary system created a "climate of fear". She thought this would lead to judges becoming state bureaucrats. At page 26 of her Report (Document No. 13) in the section

entitled "The Common Court System Law Amendments and the right to a fair trial" one interviewee is quoted as saying "I see the future of the justice system in shades of black. The community is being shaken up, authority will lose importance, we'll lose our moral compass and conformist attitudes will be very onerous for our community."

[41] Ms Szuleka concluded at pages 27 and 28 of the Report that:

- Changes made to the law were not supported by a "sufficiently rigorous analysis of the situation in the justice system".
- Court proceedings could be concluded faster if the Ministry of Justice decided to end the freeze on judicial positions.
- The process of dismissing presidents and vice-presidents of courts was not supported by a holistic analysis of the situation in the courts.
- The process of making new appointments to replace senior judicial personnel was conducted in a non-transparent way and based on irrelevant criteria.
- The amendments to the common courts broadened the opportunity for politicians to influence courts.
- These amendments would also affect the protection of judicial independence as the majority of guarantees had been removed and the protection of judicial independence depends primarily on the judges themselves.
- The amendments may violate the right to fair trial, although in the majority of cases "citizens may not sense any change in the way courts function the mechanisms of influencing courts and judges may be used in political cases or in those that arouse public interest."
- The changes made to the law will be perceptible for a long term in the functioning of the justice system.

The report made various recommendations for the Government and the European Commission to improve matters.

[42] In cross examination the witness conceded that she had not visited the Circuit Court in Bielsko-Biala where Mr Charyszyn would be sent if extradited. When asked how representative the sample of interviewees had been in her report she accepted her methodology was to follow up complaints and interview personnel who had been the subject of complaints. She had reached out to judges and prosecutors who had been mentioned in press reports or dismissed. The "snowball method" was used whereby persons who had been interviewed "told of other individuals who might be interested in participating" (see para 4 of the Personnel Report (see Production No. 14 – Document No. 13). Out of a sample of 10 persons 4 said the situation was bad, 3 said it had worsened but the rest made no comment. The witness also accepted things may have changed since the research was carried out between August 2017 and February 2018. None of the disciplinary cases referred to were from the Bielsko-Biala court.

[43] The next witness was Katarzyna Dabrowska, a law student in part-time training, who had studied in Amsterdam but had 6 years' experience as a defence lawyer in Poland, the last 4 of which had involved extradition cases. She had given expert evidence in *Chmielewski* v *Regional Court in Radom, Poland* {2018] EWHC 704 (Amin) and *Prystaj* v *Poland* [2019] EWHC 780 (Admin). She was a senior associate in the firm of Pietrzak Sidor & Wspólnicy based in Warsaw and like the other expert witnesses adopted her report in full (Production No. 14 – Document 15). She explained the content of the Polish Criminal Code and the workings of the criminal justice system and courts. In explaining the roles in the local court of the President and Vice-President, it was made clear they do not allocate cases but oversee decisions and ensure a measure of uniformity. Persons extradited to Poland, if

they require further court procedure, will be dealt with by a judge other than the one who signed the EAW. If further court procedure requires to be taken in a conviction case it will go back to the original judge who was allocated the case for trial at the outset.

[44] It did not appear from section 4 at page 10 of the witness's report that an extraordinary right of appeal by the prosecutor would apply in Mr Charyszyn's case as a decision had been made by the court in the sentence cases more than 5 years ago.

[45] The law relating to assessors or apprentice judges is fully covered at pages 11-14 of the report. The witness explained how the President of the Republic appointed candidates on the recommendation of the NJC. Qualified lawyers can apply after completing the annual training course. About 100 lawyers apply to take the course each year. Assessors are appointed for 4 years and supervised by a senior judge. At the completion of their training period they can apply for a full time post as a judge.

[46] In relation to the changes to the law of the Ordinary Courts Organisation the witness said at page 15 the Minister of Justice can control disciplinary proceedings against ordinary court judges through the appointment of disciplinary officers and judges.

[47] In section B of the report at pages 16 & 17 of the Report Ms Dabrowska was critical of the personal involvement of the Minister of Justice in the appointment of a Supreme Court judge and the conflict of interest in being both Minister of Justice and General Public Prosecutor. She concludes Polish judges do not have an independent body representing them so as not to infringe upon their independence.

[48] At page 15 of her Report, the witness was critical of the number and nature of disciplinary procedures – the pressure placed upon judges and how hearings are open to the public. At page 21 Ms Dabrowska explained the personnel in the court at Bielsko-Biala and

how there is establishment for 50 judges but due to retirements, transfers, illness and a vacancy the court was 5 posts under strength.

[49] The President of that court had however been appointed following the retiral of his predecessor in September 2018. The 2 Vice-Presidents had been appointed in August 2015 and March 2017 before new procedures had come into force. This change had occurred in March 2017 before the new regime. There were 2 assessors working in the court but only one of them undertook criminal proceedings. The witness conceded that she had never felt the need to object to a judge dealing with a particular case on the basis that he or she would not be likely to deal with the case fairly. No judges at this court seemed to be the subject of unfair disciplinary proceedings.

[50] Professor Laurent Pech then gave evidence. He has an impressive list of qualifications and has made a particular study of the rule of law for the last 20 years. His report is to be found in Production No. 14 – Document 16. He listed 7 issues of concern in this context in relation to the Polish judicial system:

- Lack of Effective Constitutional Review.
- Attempted change made to the retirement regime of the current Supreme Court judges.
- Changes made to the structure of the Supreme Court.
- Changes made to the disciplinary regime for judges.
- Changes made to the retirement regime of current ordinary court judges and the arbitrary dismissal of ordinary court presidents.
- Changes to the NCJ which resulted in its suspension from the European Network of Councils for the Judiciary in 2018.

- The new disciplinary regime at work and an overview of cases as at February 2019.

[51] The professor explained how the new Government took over control of the Polish Constitutional Tribunal in December 2016 in plain violation of the Constitution and appointed a new President without a valid legal basis and made 3 unlawful appointments to the court. These moves attracted criticism from the EC who recommended changes restoring the Tribunal's independence and legitimacy and as guarantor of the Polish Constitution. The professor concluded that the Constitutional Tribunal's judgments since December 2016 could "no longer be considered as providing effective constitutional review". 7 of the 15 members of the Tribunal published a letter in 2018 declaring that the body had ceased to function under the leadership of its current unlawfully appointed President and Vice- President.

[52] Under the second heading above Professor Pech described how the First President of the Supreme Court had his term of office prematurely terminated and a new President was appointed. The EC launched an infringement procedure on 2 July 2018 regarding the law on the Supreme Court as these moves had undermined "the principle of judicial independence, including the irremovability of judges." The EC simultaneously brought an application for interim relief and on 19 October 2018 the Vice-President of the European Court of Justice ordered Poland to immediately suspend the application of provisions relating to the lowering of the retirement age for Supreme Court judges to 65. However on 22 October 2018 the President of the Supreme Court ordered all judges affected by this ruling back to work. The Professor said a decision on the law was expected from the ECJ in May or June of 2019. He concluded that the Polish authorities were complying with EC strictures but doing so reluctantly. The Polish President violated one of the EC's rule of law recommendations to

stop verbal attacks on judges when he stated that when "significant people in the judiciary...overtly violate the effective law and constitutional provisions and disregard the binding legislation, then we are dealing with anarchy by the representatives of the judiciary."

[53] Professor Pech also quoted the Polish Prime Minister who publicly slandered judges when he justified his government's "judicial reforms" as necessary to deal with widespread corruption in the Polish judiciary on the basis of data which happened not to exist. He also referred to the decision of the President of the criminal chamber of the Supreme Court taking early retirement due to changes which will "inevitably lead to serious disruption of the work of the Criminal Chamber, chaos, and a mounting case backlog." The official communiqué referred to replacement appointees as "persons," rather than judges which may lead to questions as to the lawfulness of their positions.

[54] As regards the third point raised by Professor Pech, he noted serious concerns raised by the Venice Commission about the changes made to the membership and structure of the Supreme Court where some aspects of the reform have "a striking resemblance with the institutions which existed in the Soviet Union and its satellites." The reforms created a Disciplinary Chamber and an Extraordinary Control and Public Affairs Chamber. The Professor said these bodies were not proper courts and at page 8 of his Report quoted a judge from the Disciplinary Chamber that Polish judges who referred questions to the ECJ regarding the "judicial reforms" are guilty of treason, if not in a legal sense, at least in a moral and political sense.

[55] The professor's fourth heading dealt with the new judicial disciplinary regime. He said there were roughly 10,000 judges in Poland and about 2/3 of those belonged to one of five judicial associations. Those associations issued a statement on 15 September 2018

criticising the fact that prosecutors had become more active seeking statements from judges about their participation in public debate and attempting to intimidate judges which actions created a "chilling effect" amongst its members. Disciplinary officers investigated allegations against judges who participated in public debates or provided public statements about the reforms and preliminary disciplinary investigations took place where judges referred requests for a preliminary ruling to the ECJ. Some disciplinary cases were taken over by the new officers when the previous system had determined the judges had not committed any disciplinary offence. A case about the lawfulness of these procedures has been referred to the ECJ who heard argument in mid-March 2019 with a decision expected in May or June 2019.

[56] Professor Pech's fifth area of criticism related to changes in the judicial retirement regime. In December 2017 the EC recommended this legislative change be addressed. During the period 12 August 2017 to 12 February 2018 over 70 court presidents and 70 vice-presidents were dismissed during a 6 month transitional regime. While some legislative changes were made in light of EC criticisms the powers to arbitrarily dismiss court presidents and vice-presidents remain.

[57] In relation to the sixth issue about changes made to the NCJ and its suspension from the European Network of Councils for the Judiciary, no amendments have been made to address the EC's 4th recommendation for change in December 2017. 15 new members of the NCJ were elected on 6 March 2018 by the lower house of the Polish parliament. Judicial members of the NCJ are no longer elected by the judges themselves. On 23 November 2018 the regional administrative court ruled that the names of judges supporting candidates to the NCJ who were elected by the *Sejm* should be disclosed to the public but so far this has not been done. Judges in Gdañsk and Krakow refused to provide nominations for the NCJ

lest it legitimise the NCJ which had been altered in violation of the Polish constitution. The EC considered the politicisation of the NCJ undermined judicial independence and did not comply with European standards that judge-members of such Councils be elected by their peers. On 17 September 2018 the Polish NCJ was suspended from the ENCJ joining the Turkish NCJ as the only two national councils for the judiciary suffering this fate.

[58] Professor Pech's final point was in regard to the arbitrary nature of the new disciplinary regime for judges. A Polish judge who is subject to disciplinary proceedings has sought a ruling from the ECJ to review the compatibility of Poland's new disciplinary system with EU law. This case (C-558/18) is still outstanding and a decision is awaited. As well as the Helsinki Foundation Report referred to above Amnesty International has criticised the new system in a report entitled "Poland: The judges who defend the rule of law". A report by the Polish think-tank KOS suggested that despite EC pressure nothing has changed and has led to "multiple arbitrary disciplinary proceedings with the aim of intimidating judges who have proved too independent in the eyes of the current authorities".

[59] In cross examination Professor Pech conceded that he did not speak Polish and had been unable to read the KOS report and could only quote it second hand from academic and journalistic sources. He could not say what the position on the ground in the court of Bielsko-Biala was like. At page 17 of his report he accepted that the quotation about there being "thousands" of disciplinary proceedings against Polish judges came from an unnamed source in an article and may have been hyperbole. He considered the situation in Poland was far worse than when UK Supreme Court judges were branded "Enemies of the State" following their ruling in *R (On the application of Miller and another)* v *Secretary of State for Exiting the European Union* [2017] UKSC 5.

[60] The last witness called was Michal Wawrynkiewicz, a Polish lawyer based in Warsaw, with over 25 years' experience. Since July 2017 he has been part of the Free Courts movement which has rendered assistance to persons in conflict with new legislation which challenged judicial independence. He acted for several judges. His report (Production No. 14 – Document 17) took the form of answering 76 questions posed by lawyers acting for the two Requested Persons in the "test cases."

[61] The witness had appeared in the ECJ earlier in the week of 18 March 2019 when this extradition hearing took place and had to consider whether a Polish chamber of last instance met the requirements of EU law. 23 of the 25 Judges sitting in the new chamber of the Supreme Court had been appointed by politicians. The ECJ may report its decision in this preliminary reference (Case C-585/18) sometime after 23 May 2019 but no exact date is available at present. About 90% of the witness's professional time nowadays involves judicial cases and only a small part of his time involves dealing with everyday court cases.

[62] As part of his work in his law firm and through the Free Courts movement, he meets many judges and prosecutors. 12 organisations working in this field, including Free Courts, Amnesty International and the Helsinki Foundation are part of this collective called KOS which published a report in 2019 entitled "A Country that punishes-Pressure and Repression of Polish judges and prosecutors" (see Production No. 14 – Document 12). He accepted that he could only speak to the judges who got in touch with him but spoke of the "chilling effect" the new disciplinary proceedings had on all judges including those who had not been active in their criticism of the new regime. If a judge became the subject of a complaint about something said in public, disciplinary officers would look through the judge's file to see if other charges could be tabled. Some of the complaints seemed silly such as wearing a

T-shirt with a picture of the Polish Constitution on it or making a funny tweet on Twitter. At page 6 of his report (Document 17) he stated:

> "There is no guarantee that a judge selected to hear the case will impartially determine the case. A judge's resistance to intimidation in circumstances of a systematic threat to judicial impartiality depends upon the individual characteristics of a judge."

[63] The witness said that the NCJ was mostly a Parliamentary body as 15 of its members had been appointed by Parliament and 1 by the President of the Republic. 25 judges can nominate a candidate but the list is chosen by politicians and to that extent the list is not transparent. The Polish President has considerable power and influence over the judges, either directly or through intermediaries. The KOS report at para 3 stated that the Disciplinary Chamber of the Supreme Court is largely autonomous, has its own budget and does not report to the First President of the Supreme Court. At para 4 the report continued: "The objective of the changes was to subordinate the system of penalising judges for disciplinary reasons to the executive, and therefore to obtain the ability to influence judges and their decisions, as well as to obtain tools for investigating and removing uncomfortable judges from the profession." The KOS report listed various cases where judges were disciplined, put under pressure or subject to pre-investigation of alleged complaints. A number arose where there was a political dimension to cases involving relatives of a politician in the ruling party or a political opponent.

[64] Mr Wawrynkiewicz said that the MoJ appointed disciplinary prosecutors and judges to the Disciplinary Supreme Courts. Judges selected for this role are paid 40% more than other similar ranking judges. The Minister can insist on a complaint continuing even where the Court is minded to conclude its considerations of the matter.

[65] In cross examination the witness said that he had come to court in this case as an expert witness on Polish law. While he was involved in a case against the Polish Government which was at the ECJ, and was a member of the Free Courts movement, he gave his evidence to the best of his abilities as an officer of the court. He explained in relation to page 9 of his report (Document 17) question 20 that when a Requested Person is returned to Poland under an EAW to serve a custodial sentence he is not brought before the court as criminal proceedings are closed, but goes straight to prison. There are no judicial decisions in this process other than crediting any period of remand served abroad.

[66] At page 19 of his Report in relation to question 19 about the Retirement of Judges, the witness said that previously a judge who wished to stay on beyond the statutory age 60 for women and 70 for men simply could notify the Minister of Justice of his or her willingness to continue and this request was granted on proof of a medical note confirming fitness to perform the duties of a judge was granted. Under the new regime consent to continue in judicial service is issued by the NCJ having regard to the "reasonable use of the personnel of the Ordinary Courts and the need resulting from the workloads of particular courts". The witness suggested this consent to continue in judicial office is "based on unclear criteria."

[67] Mr Wawrynkiewicz dealt with Assessors at pages 13 to 17 of his report. They require to be Polish citizens with appropriate legal qualifications and since 2018 have been appointed by the President of the Republic. They sit alone as judges and have the same powers as their immediate colleagues. They are allocated to a court but would only be transferred as a result of disciplinary proceedings. After 3 years' service they can apply for a full-time post.

[68] The witness confirmed that the Polish Constitutional Tribunal had complied with rulings of the ECJ. There is a Tribunal of State which is a special criminal court for

politicians. The witness confirmed his answer at page 28 question 42 that there was no evidence of suggestions from politicians that judges were corrupt. He also stated that the Prime Minister was not responsible for governing the country but the leader of the ruling party. Other than the examples given on page 29 question 43 there was no evidence of politicians making statements about the sentencing of offenders.

[69] While there was 1 assessor in the Bielsko-Biala Court involved in criminal cases there was only 1 in 7 chance of her being involved in this case if Mr Charyszyn was returned to Poland. The witness had no evidence of assessor acting unfairly in a trial.

Defence submissions

[70] Mr Mackintosh said that Mr Charyszyn was aged 33, a father of 2 and had left Poland to get away from criminal associates. He had been remanded for 3 months prior to trial and pled guilty to charge 1 and was sentenced but released. The prosecutor appealed the sentence which had been imposed seeking a 3-year term. This appeal was largely unsuccessful and the sentence was now reduced from 1 year to 250 days to reflect the time spent in custody. A warrant was not obtained until April 2010. There was a 13 year gap from the offence dates to being arrested on the EAW. Initially charges 1-3 had been prosecuted together but Mr Charyszyn had been sentenced on charge 1 when he pled guilty at trial and the other charges remained as accusations and conceivably a consecutive sentence could be imposed in what looked like 3 charges committed in a short space of time.

[71] Despite what was said *in Gomes* v *Trinidad and Tobago* [2009] UKHL 21 at para 26 and the Diplock criteria in *Kakis* v *Government of the Republic of Cyprus* [1978] 1 WLR 779 at pages 782 to 783, surely the combination of the long period of time which had elapsed and the

changes which Mr Charyszyn made to his life should count in his favour when balancing all the factors on a Celinski basis?

[72] As regards the 4th charge Mr Mackintosh submitted that it was not proportionate to grant extradition on this matter once again due to its age and a value of between £700 and £800.

[73] In addition to the other points raised in regard to Article 6 issues Mr Mackintosh highlighted the evidence from Mr Wawrynkiewicz's report that an Assessor sat as a criminal judge in the Bielsko-Biala Court and there was a 1 in 7 chance that the Assessor might be allocated the case if Mr Charyszyn was extradited. Mr Mackintosh referred to the criticisms made of Temporary Sheriffs in *Starrs* v *Ruxton* 2000 JC 208, Lord Justice-Clerk Cullen at page 229D where he considered whether the office of temporary sheriff was truly independent or had the appearance of bias. See also the reference to *Valente* v *The Queen* (985) 24 DLT (4th) 161 referred to In *Starrs* at page 229F where Mr Mackintosh likened the position of the retired judge to the position of an Assessor who was desperate to secure a permanent post. Reference was also made *to Urban* v *Poland Application* No. 23614/08 at para 45 and 46.

[74] The above features suggested the appearance of a lack of independence in the Polish judicial system. In addition to the appointment procedures for assessors or apprentice judges, similar problems existed where judges were approaching the new lower retirement age, the influence of the new court Presidents and the influence of the new Disciplinary Court. See however the justification put forward by the Polish Government in their White Paper on the Reform of the Polish Judiciary dated March 2018 at paras 88 to 95 where it is stated that "a trainee judge cannot be dismissed and the nomination to the position of a judge is conducted solely on a merit-based assessment of qualifications carried out by an auditing judge."

Submissions on Behalf of the Lord Advocate

[75] Mr Richardson focussed upon the Statement of Issues (Production No. 13) which was derived from the decision in the *LM* case now reported at [2019] 1 WLR 1004. He accepted the evidence was such that the court required to make an assessment that there were substantial grounds for believing that the Requested Persons in the two test cases will run a real risk of the breach of the essence of a fundamental right to a fair trial – *LM* paras 68 & 69.

[76] The second step to consider was the required standard of breach of Article 47 of the EU Treaty – "a real risk of breach of the essence of the fundamental right to a fair trial" or a "real risk of being exposed to a flagrant denial of justice" – *LM* paras 68 to 73.

[77] The third element to consider was whether the issues raised in the cases as regards the independence of Poland's courts were liable to have an impact at the level of courts with jurisdiction over the proceedings which the Requested Persons would be subject to if extradited – *LM* para 74.

[78] Would the Requested person run a real risk of his right to an independent tribunal and a fair trial having regard to his personal situation, the nature of the offences involved and the factual context forming the basis of the EAW – *LM* para 75?

[79] The final point being whether the court in light of its preliminary assessment requires supplementary information from the issuing judicial authority – *LM* para 76.

[80] Mr Richardson accepted that the Reasoned Proposal highlighted information about systemic problems but changes were made following upon the publication of a Government White Paper. The Article 7 process had not been completed by the EC and so the executing judicial authority cannot refuse to execute the EAW without carrying out an assessment about the case before it – *LM 72 (*see also *Lis & Lange* v *Poland* at para 25).

[81] As regards the test of flagrant denial or real risk, in *Lis & Lange* v *Poland* the Court stated at para 63 that there was "no sensible distinction to be made between a breach of the essence of a right to a fair trial and the flagrant denial [of justice] test". See also *Al-Moyad* v *Germany* (2007) 44 EHRR 257 at para 101. Further detail of the elements of this concept are given in *Othman (Abu Qatada* v *UK* (2012) 55 EHRR1 paras 258-261 and quoted in *The Minister For Justice & Equality* v *Celmer (No 5)* [210] IEHC 639 at para 13. At para 68 Ms Justice Donnelly concluded that the "flagrancy test has a high threshold. The threshold goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State."

[82] These questions only arose in the context of accusation cases. While Mr Charyszyn's case raised the issue regarding assessors, there was only 1 working as a criminal judge as against 7 other judges. There seemed no concern about the senior appointments at that court which had arisen in the normal course on the retirement of the predecessors. The only live issue was in relation to the disciplinary procedures but none of the examples quoted mentioned that court and the lawyers who gave evidence could not say there was an unfairness displayed in casework by the judges.

[83] While motions can be made in conviction cases for early release from prison or to consolidate consecutive sentences these were separate proceedings. In the Free Courts Report (Production No. 14 – Document 17) at page 10 question 22 Mr Wawrynkiewicz explained that early release may be sought from the court under the criteria set forth in Articles 78-80 of the Polish Criminal Code. (See also *Gorczewski* v *Court of Swidnica, Poland* [2019] EWHC 279 (Admin) at para 25).

[84] Mr Richardson stated that Article 6/Article 47 fair trial issues did not arise after determination of the charge and any sentence passed. Execution of the sentence is not a

judicial process. *Lis & Lange* v *Poland (No. 2)* paras 19-22 specifically addressed the problem where a Requested Person is extradited on some of the offences and a cumulative sentence requires to be disaggregated but saw no difficulty in this process taking place under the mutual trust extradition scheme.

[85] The extraordinary right of appeal of the prosecutor did not seem to be a factor given the age of the cases (see the Free Courts Report at page 11 question 23 and Ms Dabrowska's Report at page 10). There was no evidence which emerged that Mr Charyszyn could not receive a fair trial if returned to the Requesting Court. While there had been difficulties and problems with the new regime it appeared that at the local court level judges continued to deal with individual accused persons in a fair way. There was no suggestion the offences in the EAW had a political element or that Mr Charyszyn might be of particular interest to the government.

Decision

[86] By contrast to the temporary sheriffs, the assessors had to complete a judges or prosecutor's training course and work for 3 years in a court where their work is supervised by another local judge. The Minister of Justice could discharge an Assessor having given notice. There was no evidence that assessors neither were dealing with cases in an unfair way nor was there evidence of them being treated unfairly themselves. The assessors' point I noticed had not made Professor Pech's top 7 criticisms of the Polish Judicial system.

[87] I found Mr Charyszyn far from clear in his evidence and at times his answers were contradictory, particularly when he was recalled to give evidence. He could offer no reason why his cases would attract special attention. There was no political element to the charges or the involvement of some high ranking person which might skew the process as was

suggested by some examples in the experts' reports. No specific issues were raised regarding the Bielsko-Biala court which might threaten the right to a fair trial. There is no basis upon which a real risk of a flagrant breach of Mr Charyszyn's of his Article 6 rights can be established on the evidence I heard.

[88] It was quite clear that he was a fugitive. He could not apply for a replacement identity card or have his name on his child's identity document for fear of being located. He could not be said to have developed a sense of security as the years passed. He had never returned to Poland since he left and was very vague about the status of his cases when he left. His Article 8 position does not amount to being the sole carer of his children. Even trying to balance all his personal factors in a *Celinski* fashion while the charges are old they represent a short course of criminal conduct which involved a very serious case of housebreaking and robbery with follow up of threats and two other cases of theft one aggravated by overcoming the security of a market stall.

[89] While criticisms of the Polish Judicial system have emerged since the change of Government and the promotion of new laws which attracted the attention of the Venice Commission, the *Reasoned Proposal* from the EC and critical reports from the Helsinki Foundation, KOS and Amnesty International, the *LM* case requires further information specific to the particular case that a fair trial would not be possible, as long as Article 7 procedures are not brought into effect.

[90] Professor Pech was a good academic witness but being an outsider, looking in on the Polish system, he could only gather from second hand sources and could not say what might happen in a particular court. To that end Ms Dabrowska and Mr Wawrynkiewicz were the more helpful witnesses who could say what the situation was like in the

Requesting Court. While they were critical of the changes in the law and its structure they could not point to an instance of seeing an unfair trial.

[91] While criticisms of these witnesses might be raised as to their impartiality in the event Mr Richardson did not challenge their admissibility and while initially concerned that Mr Wawrynkiewicz was involved in a current case at the ECJ against the Polish Authorities he took no objection and found that the witnesses' answers about the local courts assisted the Lord Advocate's position. Mr Wawrynkiewicz was a particularly impressive witness and gave his answers frankly as one would expect from an officer of the court.

[92] For these reasons I am satisfied there are no bars to extradition in terms of section 11(4) of the 2003 Act and moved to section 20 of the Act. I found that Mr Charyszyn deliberately absented himself from his trials and proceeded to section 21A of the Act. I was satisfied it was proportionate to consider extradition on the accusation offences and in considering all charges under section 21 decided that Mr Maciejec's extradition would be compatible with his Convention Rights for the reasons I have given above and accordingly make an order under section 21 of the Extradition Act 2003 ordering his remand to be extradited to Poland within 10 days of this date.

[93] I was urged to continue the case to await the outcome of the ECJ case which Mr Wawrynkiewicz had argued earlier in the week of 18 March before giving evidence before me. It concerned whether the Polish Judicial system was independent or not. However in Mr Wawrynkiewicz's own evidence and in his report at pages 33 to 36, there was nothing to suggest the court at Bielsko-Biala was not trying cases of individuals fairly. Similarly it was suggested I await the possibility of *Lis* v *Lange* being taken to the UK Supreme Court but I note the remarks made by Lord Justice Bean in *Gorczewski* v *Court of Swidnica* [2019] EWHA 279 (Admin) at para 24 where he suggests this course is unlikely to

occur. *Lis and Lange* was delayed pending the publication of the *LM* decision and that case together with the Celmer cases Nos. 1, 4 & 5 provide an adequate route map for the majority of cases in this context (see [2018]IEHC 119, [2018] IEHC 484 and [2018] IEHC 639). As Lord Burnett of Maldon, The Lord Chief Justice said in *Lis & Lang* v *Poland* at para 44 "Strasbourg has spoken, the case is closed". For an Article 6 argument to be successful "exceptional circumstances must be demonstrated" (see *Lis & Lange* at para 71.

Postscript

[94] I have taken longer on this case than perhaps ordinarily I would but I am conscious that over 40 cases remain outstanding where Article 6 is among the grounds of challenge or perhaps the sole ground. Having had the benefit of full submissions from parties in the "test" cases and the benefit of evidence from a variety of witnesses who have expertise in the rule of law and the criticisms made of the Polish system in recent years, I take this opportunity to indicate the issues which have been focussed in these proceedings.

[95] Conviction cases. Where a single charge sentence is involved the extraditee will go straight to jail and has no right to a trial process. Application can be made to the court for early release but this procedure does not amount to a trial.

[96] Multiple convictions. Separate sentences are normally served consecutively. Application can be made from prison to have the sentences consolidated (see *Gorczewski* v *Court of Swidnica Poland* [2019] EWHC 279 (Admin) para 25). Similarly when one or more charges is deemed not to be an extradition offence and falls from a series of charges where a *cumulo* sentence has been imposed, a disaggregation hearing at the requesting court will take place where it is assumed a lower sentence will be imposed – see *Lis & Lange* v *Poland (No 2)* [2019] EWHC 674 at paras 19-22.

[97] Accusation cases. While criticisms of the Polish system remain the EC have stopped short of the procedures they adopted following the *Reasoned Proposal* dated 20 December 2017. The EC simultaneously brought an application for interim relief and on 19 October 2018 the Vice-President of the European Court of Justice ordered Poland to immediately suspend the application of provisions relating to the lowering of the retirement age of Supreme Court judges. These measures were acted upon so that Article 7 procedures under the EU Treaty have not been taken against Poland. To establish a case that a Requested Person is exposed to the risk of flagrant denial of justice that is at issue, it is necessary to establish that there are particular circumstances relating either to that person or to the offence in respect of which he is being prosecuted or has been convicted which expose him to such a risk. Thus the ECJ suggests, inter alia, that it should be ascertained whether the person who is the subject of the EAW is a political opponent or whether he is a member of a social or ethnic group that is discriminated against. The ECJ also suggests that it should be examined, *inter alia*, whether the offence for which the individual concerned is being prosecuted is political or whether the powers that be have made public declarations concerning that offence or its punishment *Criminal Proceedings against LM* [2019] 1 WLR 1004.

[98] In *Lis, Lange & Chmielewski* v *Poland* [2018]EWCA 2848 (Admin) the Lord Chief Justice said in delivering the judgment of the court at para 66:

> "There should be no need for expert evidence of a general nature to be adduced in Polish extradition cases pending the resolution of the Article 7 TEU process. The relevant matters are sufficiently explored in materials available in the public domain and, in particular, in those generated in that process."