Neutral Citation No: [2024] NICty 1 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* 2024NICty1 *ICOS No:* 20/038888 *Delivered:* 05/01/2024

IN THE COUNTY COURT FOR NORTHERN IRELAND

IN THE MATTER OF THE EXTRADITION ACT 2003

Between:

REPUBLIC OF POLAND

Requesting State

and

KRZYSZTOF PREYZNER

Requested Person

Ben Thompson BL (instructed by The Crown Solicitor's Office) for the Requesting State
Sean Devine BL (instructed by Bannon Crawford Solicitors) for the Requested Person

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HHJ GILPIN

[1] Krzysztof Preyzner ("the Requested Person") was born on 2 August 1961 in Gdynia, Poland.

[2] On 5 February 2020 Judge Kawulak, sitting in the Regional Court in Elbag, Poland, issued a European Arrest Warrant seeking that the Requested Person be extradited to Poland ("the Requesting State"). This Warrant is in the form of an "accusation warrant." It was certified by the National Crime Agency on 14 April 2020.

[3] The Requested Person is sought in connection with having committed offences of dishonesty namely:

Count 1: That he assisted in tax evasion between 13 September 2011 and 21 January 2012. The estimated loss in tax revenue is stated as 1,222,322.20 zł. Seemingly this equates to approximately £224,008 as of 1 November 2022. This count carries a maximum sentence of five years imprisonment.

Count 2: That he aided and abetted the commission of that fraud within five years of serving a sentence of at least six months imprisonment for a similar offence. This count carries a maximum sentence of ten years imprisonment.

Count 3: That he evaded excise duty between 13 September 2011 and 21 January 2012 by "changing the purpose" of 1,035,790 litres of "lubricating oil" to "liquid fuel." The estimated loss in excise revenue is stated as 1,887,209.38 zł which equates to approximately £345,839 as of 1 November 2022. This count carries a maximum sentence of five years imprisonment.

Count 4: That he transferred funds "in a way that hampered the establishment of their criminal origin" between 7 November 2011 and 25 January 2012. This count carries a maximum sentence of eight years imprisonment.

[4] In short compass the Requested Person faces 4 counts of fraud for acts committed between September 2011 and February 2012. The Warrant alleges that there are 17 co-accused in relation to the events for which the Polish authorities seek the extradition of the Requested Person.

[5] The Requested Person was arrested at his home at Flat 3, 84 Fitzroy Avenue, Belfast on 11 June 2020 at 0040.

The history of proceedings in Northern Ireland

[6] The Requested Person first appeared before a court in this jurisdiction on 11 June 2020. He was granted bail and has remained subject to this since then.

[7] On 24 June 2020 the Court issued a Request For Further Information ("RFFI") to the Requesting State. This concerned an issue that had been raised as to whether there had been a decision made to try or charge the Requested Person. On 14 July 2020 the Requesting State provided its reply to the RFFI.

[8] The matter was then listed for hearing on two occasions in 2020. However, it did not proceed on either occasion as written submissions on behalf of the Requested Person had not been filed.

[9] The proceedings were then delayed because of issues arising from the pandemic and while decisions of superior courts on an issue then in play in this case, namely that of the independence and impartiality of the judicial authority in Poland, were awaited. The Divisional Court handed down its decision in *Poland v Czerwonobroda* [2022] NIQB 44 on 6 June 2022.

[10] Thereafter, on 5 October 2022, the Requested Person served two written submissions namely a submission dated 21 August 2020 which had not previously

been served and a submission dated 5 October 2022. Then on 10 October 2022 the Requested Person provided an unsworn but signed witness statement with no explanation being proffered as to why an affidavit was not filed. On 2 November 2022 the Requesting State filed submissions in rejoinder to the two submissions filed in October 2022 by the Requested Person.

[11] The matter then came on for hearing in December 2022. On the morning of hearing the Requested Person, for the first time, indicated that he wished, in addition to the matters in his written submissions, to rely on the specialty bar to extradition provided for in s17 of the Extradition Act 2003 ("the Act"). The Requested Person wished to make submissions that appropriate arrangements were not in place in Poland to ensure he would only be tried for the offences set out in the extradition warrant or others disclosed by the same facts. The proceedings were adjourned to allow the Requested Person to address this new issue. However, in due course the Requested Person indicated he did not intend to rely on the specialty bar.

[12] Due to concerns the Requested Person's lawyers had in relation to the Requested Person's mental health a report was then obtained from Dr Michael Curran, Consultant Psychiatrist, dated 6 March 2023.

[13] On 20 March 2023 the Requested Person swore an affidavit effectively in substitution for the earlier unsworn statement he had made.

[14] Then, in May 2023, the Requested Person raised with the court a desire to ask the Requesting State that its representatives would "speak with" the Requested Person pursuant to the provisions of section 21B(3) of the Act. I exercised my discretion to adjourn the hearing of the extradition proceedings to allow the request to be made. On 26 May 2023 the request sought by the Requested Person was sent by the court to the Requesting State. The response of the Requested State was received back by the court on 1 June 2023. In it the Requesting State declined the Requested Person's request and reaffirmed its commitment to seek his extradition. Further written submissions were then filed on this issue over the course of the summer recess.

[15] On 8 September 2023 the Requested Person gave oral evidence to the court. He adopted his affidavit evidence as his evidence in chief and was thereafter cross-examined by Mr Thompson.

[16] The Requested Person gave evidence about leaving Poland and coming to Northern Ireland. In his affidavit the Requested Person said that he had lived in the United Kingdom since 2009, living in Devon but travelling back and forth to Poland for work. However, during cross-examination by Mr Thompson, the Requested Person resiled from this. He said he did not work in Poland during this period.

Initially he said that the reason he had been back to Poland was to visit his mother who was ill. However, later he said his presence in Poland was for holidaying.

[17] When Mr Thompson put it to the Requested Person that information provided by the authorities in Poland suggested that he had been registered in Poland as unemployed in January 2011 and had claimed unemployment benefit from April 2011 through to August 2011, the Requested Person said that information was wrong. When pressed by Mr Thompson he resiled from this as well. He said that his mother had been hospitalised during this period and he wasn't able to work and therefore he had claimed benefits for a short period of time and that he had lived in Poland from January 2011 through to August 2011.

[18] In his affidavit the Requested Person said he has lived "constantly" in Northern Ireland since 2012. He said he lived at the same privately rented address and, while he had previously been in employment, for health reasons he is no longer working.

[19] Mr Thompson asked the Requested Person about information supplied by the authorities in Poland that in 2012 he had twice applied for a new Identity Card and in doing so specified his residential address as being in Gydnia, Poland. The Requested Person conceded this information could be correct and the address cited was one he used in connection with claiming his state benefits.

[20] The Requested Person then said he left Gydnia in the spring of 2012 and travelled to a variety of different countries. He mentioned the Czech Republic, Israel, Canada, Cuba, England, Spain, Bahamas, and Ireland before ending up in Northern Ireland in August 2012.

[21] He said that after leaving Poland he initially went to the Czech Republic with his partner for a holiday but, while she returned to Poland afterwards, he did not. He said there was no future for him in Poland and thus he did not return. Initially the Requested Person said he had employment lined up in Northern Ireland but later resiled from this also.

[22] When Mr Thompson asked the Requested Person whether he was aware that on leaving Poland in 2012 the authorities there were looking for him he said that he wasn't and that he had not fled. Rather he reiterated that he had left Poland for a holiday as he needed a rest after a difficult period in his life in Poland.

[23] The Requested Person said in fact he wasn't aware the Polish authorities were looking for him until he was arrested by the police in Northern Ireland. He did say that some time previously, perhaps in 2018 or 2019, his sister had mentioned something about this to him and had provided him with contact numbers for the Polish authorities. However, he said that he didn't know whether what his sister was saying was correct as she was suffering with certain mental health issues.

[24] Mr Thompson put it to the Requested Person according to the Polish authorities on 4 June 2019 the Requested Person had contacted the prosecutor in charge of the case and indicated that he knew he was wanted in connection with it and that he knew there was a warrant issued against him. The Requested Person initially said he did not accept he made such a call but later accepted he did make a call but said he did not know the person he was phoning was a prosecutor. The Requested Person also denied the claim made by the Polish authorities that at that time they offered him the opportunity to engage with them via Mutual Legal Assistance.

[25] The Requested Person gave evidence that he suffers certain physical health conditions. He is in regular contact with his GP. He had a heart attack in 2022. He has also spent time as an inpatient due to his mental health issues. He is on various forms of medication.

[26] There are before the court reports from Dr Maria O'Kane, Consultant Psychiatrist dated 27 January 2021 and from Dr Michael Curran, Consultant Psychiatrist dated 6 March 2023. Dr O'Kane concludes that the Requested Person is in poor mental health suffering from anxiety and depression. Dr Curran diagnoses the Requested Person with "Chronic dysthymia … with a lengthy history of inappropriate misuse and dependency on alcohol."

[27] Mr Thompson asked the Requested Person about his criminal record which runs to some 22 convictions including offences of dishonesty. The Requested Person confirmed that in 2005 he had received a custodial sentence for fraud. He also gave evidence that he was aware he had been sentenced in 2014 in connection with fraud but claimed he had not been present when the court passed sentence and that he had not served the custodial sentence imposed.

[28] In the course of the lengthy proceedings before this court counsel for the Requested Person and the Requesting State have filed numerous lengthy written submissions. From the written and oral submissions of the Requested Person the court has sought to identify the various issues upon which extradition is resisted. Some of these overlap one with the other.

The independence of the Polish Judiciary and effective remedy

[29] As noted above these proceedings were delayed for a period of time while judgments from superior courts were awaited on issues relating to the independence of the Polish Judiciary.

[30] A judgment in this jurisdiction on the independence and impartiality of the Polish judiciary was handed down by the Divisional Court in *Poland v Czerwonobroda* [2022] NIQB 44 on 6 June 2022.

[31] In *Czerwonobroda*, Maguire LJ, approved a two-stage approach when a court considers this issue. This two-stage approach had also been approved of both by the Court of Justice of the European Union ("CJEU") in *X & Y* [C-562/21 PPU & C-563/21 PPU and by the Divisional Court in England & Wales in *Wozniak v Poland* [2021] EWHC 2557 Admin.

[32] The first stage involves the court making a general assessment of whether there is a real risk of a breach of the fundamental right to a fair trial connected in particular with a lack of independence of the courts of the Member State on account of systemic or generalised deficiencies in that Member State.

[33] The second stage involves the court assessing whether the systemic or generalised deficiencies found in the first stage are likely to materialise if the Requested Person is extradited and whether there is a real risk of a breach of the right to a fair trial.

[34] In this case Mr Thompson, for the Requesting State, conceded the first stage is satisfied. However, he submitted there was no evidence on which the court could conclude the second stage was satisfied.

[35] In his submissions dated 12 October 2023 Mr Devine, on behalf of the Requested Person, made the appropriate concession that judgments of other courts "since August 2020 knock the wind out of the sails" of submissions concerning the argument that the European Arrest Warrant is invalid because it was not issued by an independent and impartial judiciary and thus extradition would be in breach of article 6 of the European Convention on Human Rights and contrary to section 21 of the 2003 Act.

[36] Nevertheless, Mr Devine invited the court to consider that there is a "live" absence of an effective remedy point which "lives on through the preliminary reference before the Court of Justice of the European Union in *Orlowski*." Mr Devine's reference to *Orlowski* is to a decision of the Supreme Court of Ireland handed down on 23 July 2021 in Ministry of Justice and *Security v Orlowski and another* [2021] IESC 46, in which the court issued a reference to the CJEU. Mr Devine submits that this court should either refuse the request for extradition or "await guidance from the CJEU" in the *Orlowski* case on this issue of effective remedy.

[37] However, after the reference was made in *Orlowski* two further references were made to the CJEU by The Netherlands in the cases of *X & Y*. These references were made using the urgent procedure and thus judgment was given by the CJEU on 22 February 2022. [*X & Y*] [C-562/21 PPU & C-563/21 PPU]]. In *Czerwonobroda*, Maguire LJ noted the questions posed to the CJEU in *X & Y* were "virtually identical" to those in *Orlowski*.

[38] In giving judgment in *Czerwonobroda*, Maguire LJ rejected a submission that the CJEU had not dealt with the effective remedy issue in its judgment in *X & Y*. Maguire LJ said:

> "There is nothing in the CJEU's judgment to suggest that the absence of an effective remedy by which to challenge an invalid appointment was or is to be viewed by itself and without compliance with the second stage test as sufficient to warrant a decision not to return a RP in respect of a duly issued EAW to Poland. We do not consider that the CJEU in X and Y failed to address the third [the effective remedy issue] of the issues referred to them.

[39] The decision of the Divisional Court in *Czerwonobroda* is binding on this court. I therefore reject the Requested Person's submission that this court should refuse extradition or await the decision of the CJEU in Orlowski in relation to alternative remedy.

The absence of a decision to prosecute (section 12A)

[40] A bar to being extradited due to an absence of a decision to prosecute a Requested Person in the Requesting State was, in 2014, inserted into the 2003 Act by way of s12A which provides:

> "(1) A person's extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—
>
> (a) it appears to the appropriate judge that there are reasonable grounds for believing that—
>
> (i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and
>
> (ii) the person's absence from the category 1 territory is not the sole reason for that failure,
>
> and
>
> (b) those representing the category 1 territory do not prove that—

(i) the competent authorities in the category 1 territory have made a decision to charge and a decision to try, or

(ii) in a case where one of those decisions has not been made (or neither of them has been made), the person's absence from the category 1 territory is the sole reason for that failure.

(2) In this section "to charge" and "to try", in relation to a person and an extradition offence, mean—

(a) to charge the person with the offence in the category 1 territory, and

(b) to try the person for the offence in the category 1 territory."

[41] The Explanatory Memorandum dealing with the insertion of this provision into the Act in 2014 noted that:

> "the courts have interpreted the provisions of the 2003 Act in a "cosmopolitan" way, mindful of the differences in criminal procedure in other Member States, and it is anticipated that the courts will apply the same approach to the interpretation of section 12A and, in particular, the concepts "decision to charge" and "decision to try."

[42] This bar to extradition prevents the extradition of a person where the Requesting State has not made a decision to charge or try the Requested Person.

[43] The purpose of this bar is directed to the possibility of a person being extradited and then remanded into custody in the Requesting State while the crime alleged against them is the subject of a lengthy investigation without a decision to charge or try being made.

[44] S12A requires consideration in two distinct stages.

First stage consideration

[45] In the first stage the burden is on the Requested Person. The requisite standard being "reasonable grounds for believing." This is a lesser one than proof on the balance of probabilities but more than a mere assertion.

[46] The court must ask itself whether there are reasonable grounds for believing that:

- o The Requesting State has not made a decision to charge or try the Requested Person and
- o The Requested Person's absence from the Requesting State is not the sole reason for that failure

Second stage consideration

[47] If the Requested Person does satisfy the first stage then the burden falls on the Requesting State to prove to the criminal standard that:

- o The Requesting State has made a decision to charge and a decision to try and
- o Where one of those decisions has not been made the Requested Person's absence from the Requesting State is the sole reason for that failure

[48] In *Puceviciene v Lithuania* [2016] EWHC 1862 the court held that the first stage could be concluded with reference only to the extradition warrant and that supplemental information would only be required from the Requesting State if the Requested Person has surmounted the first stage.

[49] However, in the instant case a different path was followed in that, before the first stage consideration had taken place, at the request of the Requested Person and with the agreement of the Requesting State further information was sought from the Requesting State. The RFFI was dated 24 June 2020 with a response being received dated 14 July 2020.

[50] In *Litwinczuk v Poland* [2019] EWHC 2745 Knowles J held that "further information from the authorities in the requesting state is to be treated as if it were incorporated into, and thus part, of the EAW." In this case when considering the first stage I intend to follow, as both counsel indicated I should, this approach and to read the Warrant and the response to the RFFI as a whole.

[51] The Requested Person submits that in this case "it does not look like" there has been a decision to prosecute when one considers the European Arrest Warrant and the response to the RFFI. When the court pressed Mr Devine on this issue on 15 November 2023 Mr Devine submitted that the authorities in Poland appeared to be at what he termed "the investigatory stage."

[52] However, the Requesting State submits that given the reply to the RFFI from the Requesting State it can be inferred a decision had been made to try the Requested Person.

[53] On the information to hand I do not find there to be reasonable grounds for believing the Requesting State has not made decision to charge or try the Requested Person.

[54] In this regard I note that the response from the Requesting State dated 14 July 2020 to the RFFI indicates:-

- The investigation into the alleged offending was initiated by the Polish authorities on 16 November 2011.

- Evidence gathered in the course of the investigation, which they have summarised in the response, leads the Polish authorities to the conclusion that the Requested Person was involved in the offending .

- The Requesting State sought to identify where the Requested Person was from September 2013.

- The efforts made to locate the Requested Person included entering his details onto the second generation Schengen Information System and tasking a "competent police unit" to search for him.

- An indictment in relation to the matters in respect of which the Requested Person is sought was filed in the Regional Court in Elbag, Poland on 30 June 2017. This indictment was presented against 17 people.

- The case against the Requested Person was severed from that involving his co-accused.

- The severed case against the Requested Person has been stayed "in view of the inability to carry out the measures that required his attendance."

- The Requested Person has not been charged with the offences set out in the European Arrest Warrant though a decision to do so has been made.

- The Requested Person's extradition is sought "for the purposes of his "prosecution" that is allowing the prosecutor to conduct and complete the proceedings" against him.

- The decision made to charge the Requested Person will be read to him on his return to Poland.

Passage of Time [s14]

[55] By reason of s14 of the Act a Requested Person's extradition is barred because of the passage of time, if it appears that it would be unjust or oppressive for them to be surrendered.

[56] Section 14 provides:

> "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)."

[57] Thus, in an accusation warrant case, such as the instant one time begins to run from the date of the alleged offences i.e. the earliest date being September 2011

[58] However, a Requested Person cannot usually rely on any period of time for which they bear culpability for that period if they deliberately fled the Requesting State i.e. where they are a fugitive.

[59] It is for the Requesting State to prove the Requested Person's fugitive status beyond all reasonable doubt. The test is a subjective one, namely, whether the Requested Person deliberately and knowingly placed themselves beyond the reach of the legal process of the Requesting State [*De Zorzi v France* [2019] EWHC]

[60] In *Pillar-Neuman v Austria* [2017] EWHC the Divisional Court said that "Fleeing the country, concealing whereabouts or evading arrest are examples" of a Requested Person knowingly placing themselves beyond the reach of the legal process.

[61] I have set out previously the evidence the Requested Person has given to the court both in affidavit and oral evidence as to how he came to leave Poland.

[62] While the Requested Person's evidence as to when and why he left Poland was in many respects unsatisfactory I am not satisfied that the Requesting State has proved beyond reasonable doubt that the Requested Person deliberately and knowingly placed himself beyond the reach of the legal process of the Requesting State.

Unjust and oppressive

[63] Having so found, the question for the court to consider is whether it would be "unjust or oppressive" to extradite the Requested Person by reason of the passage of time that has passed since September 2011 to date.

[64] In *Kakis v Cyprus* [1978] 1 WLR 779 at 782-3, Lord Diplock set out what is meant by "unjust or oppressive" when he said:

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

[65] The burden of proof in relation to a finding of "unjust or oppressive" rests on the Requested Person to the civil standard.

Injustice

[66] The key principles regarding injustice were set out by Leggatt LJ in *Eason v United States of America* [2020] EWHC where he said:

> "27. As regards injustice, or that aspect of injustice which relates to a risk of prejudice in the conduct of the criminal proceedings in the foreign state, the following points emerge from subsequent authorities (including *Gomes v Trinidad and Tobago* [2009] UKHL 21; [2009] 1 WLR 1038 at paras 30 – 34, and *United States of America v Tollman & Tollman* [2008] EWHC 184 (Admin) at paras 47-48):
>
> (i) If, because of the passage of time, a fair trial is now impossible, it would clearly be unjust to order extradition;
>
> (ii) A court should, however, be very slow to come to such a conclusion where the state making the request is one that is shown to have, or may be presumed to have, appropriate safeguards to protect the defendant against unfairness resulting from the passage of time in the trial process;
>
> (iii) The possibility or otherwise of a fair trial is not the only relevant consideration, as the question is not

> whether it would be unjust or oppressive to try the accused but whether it would be unjust or oppressive to extradite him."

[67] In relation to injustice the essential question is whether in the particular case a fair trial is impossible. Poland is a member of the Council of Europe and as was said in *Gomes v Trinadad & Tobago* [2009] UKHL 21 para 35 such countries:

> "are subject to Article 6 of the Convention and should readily be assumed capable of protecting an accused against an unjust trial…"

[68] In *Kakis v Cyprus* [1978] 1 WLR 779 it was said that in considering whether extradition would be oppressive the court will consider the,

> "hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration."

[69] In *Eason v United States of America* [2020] EWHC the court said hardship,

> "goes beyond mere or ordinary hardship which is a comparatively common consequence of an order for extradition and will not easily be satisfied."

[70] While the court went on to set out some of the relevant factors a court may consider including culpable delay on the part of the Requesting State, the seriousness of the offence and the impact of extradition on the Requested Persons family the court said:

> "Ultimately, an overall judgment on the merits is required and it is important to stay focused on the words of the statute itself."

[71] That said I do note that delay by itself can be a cause of injustice particularly where it is culpable delay by the Requesting State.

[72] In the instant case the Requested Person submits that his extradition would be both unjust and oppressive.

[73] In relation to injustice the Requested Person submits that the Requesting State's decision to seek his extradition "has taken so long." He submits the Requesting State failed to have the police search for him until 2017 even though he applied for fresh identity documents previously.

[74] In relation to oppression the Requested Person submits, "more than just hardship has been caused." When pressed by the court as to what the "more" is Mr Devine submitted that the failure to deal with matters expeditiously has, during the Requested Person's time in Northern Ireland, caused a deterioration in his health to such an extent that it would be oppressive to extradite him. In addition, the Requested Person also asks the court to note that he has "built a life for himself" and "lived lawfully and openly."

[75] The Requesting State says there is no evidence to support the proposition that the Requested Person's extradition would be either unjust or oppressive.

[76] In my view the Requested Person has failed to discharge the burden that rests on him to show that his extradition will lead to injustice or oppression.

[77] In relation to injustice, I do not find there to have been delay on the part of the Requesting State such that it would be unjust to extradite the Requested Person. I am satisfied the Requesting State began its investigation in 2011 and continued it thereafter including gathering evidence, identifying suspects, making efforts to locate the Requested Person and bringing court proceedings. The reply to the RFFI makes it clear the Requesting State sought to identify where the Requested Person was from September 2013. In addition, the Requested Person argues that changes in the Polish Judicial system have deprived the Requested Person on Article 6 and Common Law Rights. I have already addressed this issue earlier. I find the submissions made on behalf of the Requested Person to be without substance.

[78] In relation to oppression, there is in my view nothing to suggest the Requested Person's extradition would be oppressive. He undoubtedly has certain medical issues, both physical and mental, for which he receives treatment in Northern Ireland. However there is nothing to suggest he would not receive adequate treatment if extradited to Poland.

Proportionality [s21A]

[79] Where none of the statutory bars to extradition provided for in section 11(1) apply and where the Requested Person is sought under an accusation warrant but is not alleged to be unlawfully at large after conviction, the court is required, by reason of section 11(5) to procced under section 21A.

[80] Section 21A creates two separate additional statutory bars to extradition, namely, whether extradition would be:

- compatible with Convention rights and/or

- disproportionate

[81] In this case the Requested Person relies on both additional bars.

[82] When considering whether extradition would be disproportionate under s21A the court is only permitted to have regard to three "specified matters relating to proportionality" set out in section 21A(3).

[83] In *Miraszewski v Poland* [2015] 1 WLR 3929 Pitchford LJ said of the three factors in section 21A(3):

> "The court may, depending on its evaluation of factors, conclude that extradition would be disproportionate if
>
> (i) the conduct is not serious and/or
>
> (ii) a custodial penalty is unlikely and/or
>
> (iii) less coercive measures to ensure attendance are reasonably available to the requesting state in the circumstances"

[84] Quite properly no attempt has been made in this case by the Requested Person to suggest that either the conduct is not serious and/or a custodial penalty is unlikely.

[85] In this regard I have earlier set out the four counts that the Requested Person faces. They involve matters of dishonesty. I note the maximum sentences for each offence are significant, ranging from five to 10 years. In my assessment the conduct alleged is serious and a custodial penalty is likely.

[86] The Requested Person's submissions on the proportionality limb of s21A are directed to the issue of a less coercive measure being reasonably available.

[87] Section 21A(3)(c) requires the court in conducting its proportionality assessment to consider:

> "the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of…"

[88] In this case the Requested Person's initial submission was that a less coercive measure was available, namely, that of a European Investigation Order.

[89] A European Investigation Order is a judicial decision made by a judicial authority in a Member State of the European Union to have one or several specific

investigative measures in the course of criminal matters carried out in another Member State.

[90] However, after the transition period governing the United Kingdom's withdrawal from the European Union ended at 11pm on 31 December 2020, European Investigation Orders issued by Member States to the United Kingdom are now processed as Mutual Legal Assistance requests pursuant to article 61(1)(l) of the Agreement on the Withdrawal of the United Kingdom from the European Union.

[91] A request for Mutual Legal Assistance is provided for in the Trade and Co-operation Agreement agreed in December 2020 between the European Union and the United Kingdon.

[92] In general, Mutual Legal Assistance requests sent to the United Kingdom will now be governed by the 1959 Council of Europe's European Mutual Assistance Convention and its two additional protocols which prevailed before the United Kingdom adopted the European Investigation Order procedure.

[93] That said, the Trade and Co-operation Agreement incorporates some of the features that are to be found in the European Investigation Order procedure in new requests for Mutual Legal Assistance including the principle of proportionality and possible recourse to an alternative investigative measure if the measure sought does not exist in the Requesting State.

[94] In the Requested Person's submissions dated 21 August 2020, but not served until 5 October 2022, mention is made of the court's powers provided for in s21B to adjourn the extradition proceedings to allow for the Requesting State to "speak with" the Requested Person if either should make such an application.

[95] However, no such application was made by either the Requesting State or the Requested Person until 10 May 2023, being the date the case had been listed for hearing, when the Requested Person then choose to do so.

[96] On 10 May 2023 the Requested Person invited the court to adjourn the hearing listed for that day in order that the Requesting State would consider a request issued pursuant to section 21B(3) to "speak with" the Requested Person. The court acceded to this request for an adjournment.

[97] The precise terms of the request were then finalised and by a letter dated 26 May 2023 the Court wrote to the Requesting State to see whether its representatives were willing to "speak with" the Requested Person.

[98] On 1 June 2023 the Requesting State replied as follows:

> "In response to the request dated 26 May 2023, I kindly inform you that Gdansk Divisional Prosecution Service does not consent to the proposed form of contact with Krzysztof Preyzner. Polish criminal proceedings do not provide for suspects to speak with representatives of the appropriate authorities from Poland through the County Court at Belfast.
>
> We believe that Krzysztof Preyzner's attitude is aimed at prolonging the proceedings regarding his extradition case. He was aware of the proceedings held against him in Poland, since he contacted the prosecutor in charge of the investigation on 4 June 2019. Despite the agreements for providing his address details, he has not contacted Gdansk Divisional Public Prosecution Service again.
>
> Despite the above, we ask you to consider the case and make a decision on the extradition of Krzysztof Preyzner as soon as possible."

[99] The decisions of Thomas LCJ in *Puceviciene v Lithuania* [2016] EWHC and Garnham J in *Sutas v Lithuania* [2017] EWHC make it clear that an interview via Mutual Legal Assistance, such as was sought in the instant case, is not a "less coercive measure" when the court considers the provisions of section 21A(3)(c).

[100] As Garnham J said in *Sutas* [para 30] when referring to the judgment of Thomas LCJ in *Puceviciene*:

> "30. It seems to be clear that what the Lord Chief Justice intended when he said, at paragraph 80, that it was "difficult to square" the idea that MLA might be included in the concept of "*less coercive instruments*" with the statutory effect of section 21A, was that mutual legal assistance could not properly be seen as a less coercive measure within section 21A. If that is right, the District Judge was entirely correct when she held, at paragraph 52, that "*MLA cannot be used as a less coercive measure under section 21A(3)(c)*."
>
> 31. Although I must be careful not to construe the Divisional Court judgment as if it were a trust deed or a statute, that interpretation seems to me consistent with what the Lord Chief Justice said in paragraph 81. Section 21B, he said, "is therefore the route to the use of MLA to advance the criminal process through interview for

> extradition." (emphasis added). In my view, the use of the definite, rather than the indefinite article, was deliberate. That seems to me enough to dispose of this point."

[101] In conducting the assessment of whether extradition would be disproportionate the court must consider all three matters in section 21A(3). Even if I am wrong and the mutual legal assistance sought under s21B is a less coercive measure under s21A I would still not be persuaded that extradition was disproportionate.

[102] The first two factors in section 21A(3) strongly favour extradition. If Mutual Legal Assistance did allow the Requested Person to "speak with" the Requesting State while it would of course allow him to respond to the allegations that have been made, given the extensive investigation already conducted by the Requesting State and the proceedings brought against the Requested Person and his co-accused, it seems to me highly unlikely that simply speaking with the Requested Person would cause the Requesting State to desist continuing proceedings against him.

Human Rights [section 21A]

[103] As noted above section 21A creates two separate additional statutory bars to extradition in an accusation warrant case.

[104] As well as the issue of proportionality the court is required to consider the compatibility of extradition with human rights.

[105] This was not a ground that was to be found in the Requested Person's initial submissions. However, in his submissions dated 12 October 2023 Mr Devine refers to the Requested Person's rights under the European Convention on Human Rights and makes specific mention of Article 8 thereof.

[106] I note, when considering this issue, there is a presumption that Member States of the Council of Europe, such as Poland, are able and willing to meet their obligations under the European Convention on Human Rights in the absence of evidence to the contrary. This presumption is enhanced where the Requesting State is in addition a Member State of the European Union [*Krolik v Poland* [2012] 1 WLR 490].

[107] In the instant case the Requested Person in resisting extradition relies on his Article 8 Convention Right. This 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."

[108] In *HH v Italy* [2013] 1 AC 338 the court summarised the key principles arising from its earlier decision in *Norris v USA* [2010] 2 AC 487:

> "(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 extraditee 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.

[109] In *Polish Judicial Authorities v Celinski & others* [2015] EWHC Lord Thomas LCJ said:

> "[15] As we have indicated, it is important in our view that judges hearing cases where reliance is placed on Article 8 adopt an approach which clearly sets out an analysis of the facts as found and contains in succinct and clear terms adequate reasoning for the conclusion arrived at by balancing the necessary considerations.
>
> [16] The approach should be one where the judge, after finding the facts, ordinarily sets out each of the "pros" and "cons" in what has aptly been described as a "balance sheet" in some of the cases concerning issues of Article 8 which have arisen in the context of care order or adoption: see the cases cited at paragraphs 30 to 44 of Re B-S (Adoption: Application of s.47(5)) [2013] EWCA Civ 1146. The judge should then, having set out the "pros" and "cons" in the "balance sheet" approach, set out his reasoned conclusions as to why extradition should be ordered or the defendant discharged.
>
> [17] We would therefore hope that the judge would list the factors that favoured extradition and then the factors that militated against extradition. The judge would then, on the basis of the identification of the relevant factors, set out his/her conclusion as the result of balancing those factors with reasoning to support that conclusion. As appeals in these cases are, for the reasons we shall examine, common, such an approach is of the greatest assistance to an appellate court."

[110] In relation to the 'balance sheet' approach suggested in *Celinski* the Requesting State has identified the following factors in favour of ordering extradition:

- The Requested Person has no ties to this jurisdiction

- The Requested Person's complaints about his physical and mental health add nothing as he will receive adequate care in the Requesting State

- The offending for which he is sought is particularly serious

- Delay was caused by the Requesting Person having put himself beyond the reach of the Requesting State given that he phoned the Prosecutor in June 2019 and revealed he was aware he was being sought

- There is considerable public interest in ordering extradition

[111] When the court raised with Mr Devine what factors he relied on militating against extradition he submitted the court must consider that:

- The Requested Person has built a life of some "routine" in Northern Ireland which includes "a social life."

- The Requested Person has a number of medical professionals engaged in his care and treatment in Northern Ireland.

- There has been "unexplained delay" on the part of the Requested State in issuing the extradition request which "weighs heavily against extradition."

[112] In relation to the Requested Person's ties to this jurisdiction, I do not accept they are of any significance. He has no family here, he does not own property here nor is he now in employment.

[113] In relation to his health I fully accept that the Requested Person suffers both physical and mental health issues. However, there is nothing to suggest these issues are such that he cannot be adequately treated in Poland.

[114] In relation to delay in *HH v Italy* [2013] 1AC Lady Hale said at paragraph 8:

> "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"

[115] I note the decision of the Divisional Court in *Latvia v Ancevskis* [2021] NIQB 116 in which the court set out the relevant principles gleaned from the jurisprudence on this issue.

[116] The Requesting Person, while noting that the Requesting State claims to have "been making efforts to establish the place of residence of the Requested Person since September 2013" is critical of the extent of such efforts claiming that the Requested Person could easily have been detected. As Mr Devine put it the Requested Person was "on the grid."

[117] I am quite satisfied, based on the Requesting State's response to the RFFI, that it has been making efforts to locate the Requested Person since 2013 and that these include entering his details on the second generation Schengen Information System and tasking a "competent police unit" to search for him. I do not find there to have been culpable delay on the part of the Requesting State. I am not persuaded that the time that has passed since the offending in question is such in the particular circumstances of this case that it would outweigh the public interest in ordering extradition for what are serious offences.

Conclusion

[118] For the reasons stated I order the Requested Person's extradition to the Requesting State.

[119] The Requested Person has 7 days from today's date to lodge an appeal to the High Court against this ruling pursuant to s26 of the Act.

[120] I will hear submissions from counsel as to whether he should be remanded into custody pending his extradition.