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*(subject to editorial corrections)**

In the Recorders Court for the City of Belfast

10/109547

THE REPUBLIC OF POLAND

-v-

ANDRZEJ JACEK SZYSLER

His Honour Judge Grant

[1] This is an application by the Republic of Poland, as the Requesting State, for the extradition of Andrzej Jacek Szysler, the Requested Person. The Requesting State seeks the return of the Requested Person on foot of a European Arrest Warrant based on the judgment of the Circuit Court for the town of Gorzow Wielkobolski dated 7 March 2003. The court imposed a sentence of two years and six months imprisonment on the defendant for certain drug offences. The Requested Person had apparently served half of the sentence on remand and there remains a period of one year and seven months custody to be served. In short the offences are alleged to have been committed between May 2000 and November 2000 and concern the possession and supply of heroin which is a Class 'A' drug within this jurisdiction.

[2] The chronology of events is as follows:

(i) 7 March 2003 the defendant was sentenced to two years and six months imprisonment;
(ii) 16 October 2003 his sentence was affirmed on appeal;
(iii) 5 January 2004 the defendant was summonsed to appear and surrendered to custody and serve his sentence;
(iv) Due to his failure to present on 9 January 2004 the court ordered the defendant's arrest and detention;
(v) On 9 February 2004 the Requested Person was granted a six month extension until 9 August having filed an application to defer the execution of the sentence;
(vi) On 17 August 2004 the Requested Person was granted a further six months deferment until 17 February 2005;

(vii) On 15 September 2004 the Requested Person was summonsed to present himself at the prison in order to serve his sentence;
(viii) The Requested Person failed to appear;
(ix) On 22 February 2005 the court ordered the Requested Person to surrender;
(x) On 14 November 2005 the court issued an Arrest Warrant;
(xi) On 16 February 2006 a European Arrest Warrant was issued by the Requesting State requesting the return of the Requested Person;
(xii) On 15 May 2010 SOCA certified the European Arrest Warrant;
(xiii) On 26 August 2010 the Requested Person was brought before this court on foot of the executed Arrest Warrant and the court was informed that the Requested Person left Poland and had been living in Northern Ireland for a period of five and a half years, since early 2005. He left Poland before the date that he was due to present himself and surrender to custody.

[3] The process of modern extradition is governed by a combination of European and Domestic Statutory Instruments. On 13 June 2002 the members of the European Council agreed and brought into force the Council Framework Decision. This should be read in combination with the Extradition Act 2003 which came into force on 1 January 2004.

[4] This Act made provision for a new framework for extradition and procedures to achieve this. Part 1 of the Act contains the extradition arrangements most relevant to this case. Article I provides fast track extradition arrangements for Category I Territories. The Requesting State, in this case Poland, is a Category I Territory. These arrangements are designed to secure the return for trial or punishment of persons accused of or convicted of crimes.

[5] Section 2 of the Extradition Act 2003 requires the judicial authority of the Category I Requesting Territory to supply an arrest warrant containing information specified in Section 2(1)(a) or Section 2(2)(b). These clauses or sub-sections deal respectively with accused and convicted persons. Thus Section 2(2)(b), which is applicable to this application, requires the Warrant to contain a clear and unequivocal statement that the Requested Person in respect of whom the Warrant has been issued has been convicted of an offence specified in the warrant by a court in the Category I Territory.

[6] Only those persons accused or convicted of an Extradition offence can be extradited on foot of a European Arrest Warrant. Sections 64 and 65 of the 2003 Act define Extradition offences and a list of some 32 offending conducts are set out in Schedule 2. It is of note that the definition in Section 64(2) does not require the conduct to be a criminal

offence in the United Kingdom. It is sufficient if it is criminal in the Requesting State and the other conditions in Section 64(2) are satisfied.

[7] Part I of the Act sets out the procedure for arrest in Category I cases. In addition Sections 12-19 of the 2003 Act set out a number of bars to extradition such as double jeopardy, passage of time, age and speciality. Section 20, 21 and 25 contain other grounds for refusing extradition such as conviction in the absence of the accused, physical or mental conditions. Section 21 prohibits the court from ordering extradition where to do so would be incompatible with the defendant's Convention rights within the meaning of the Human Rights Act 1998.

[8] This application for extradition came on before me on 17 February 2011 at Laganside Courthouse. The Requesting State was represented by Mr Stephen Ritchie BL and the Requested Person by Dr Sean Doran BL. The Requested Person had the assistance of an interpreter. The Requested Person was formally identified and through counsel accepted that the Arrest Warrant complied with all statutory requirements, had been duly executed and appropriately disclosed and set out Extradition offences. I am satisfied that the formal requirements of the warrant had been complied with.

[9] The Requested Person filed an affidavit sworn on 28 January 2011 and it is clear from this document and the submissions made by Counsel that the Requested Person seeks to raise as a bar to his extradition the assertion that his extradition would not be compatible with his Human Rights under the European Convention as incorporated into United Kingdom domestic legislation by the Human Rights Act 1998. None of the formal bars to extradition set out in Sections 12-19 are asserted.

[10] The Human Rights Act 1998 requires by Section 3(1) that insofar as it is possible to do so, United Kingdom legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights. Furthermore Section 6(1) makes it unlawful for a public authority to act in a way which is incompatible with a Convention right and Section 6(3) includes within the definition of public authority, a court or tribunal. An appropriate judge presiding over an extradition hearing under the Extradition Act 2003 is a public authority. Section 21 of the Extradition Act 2003 specifically addresses the functions of the appropriate judge with regard to Human Rights:

<u>Section 21 Human Rights:</u>

(i) If a judge is required to proceed under this Section by virtue of Section 11 or 20 he must decide whether the person's extradition would be compatible with the Convention Rights within the meaning of the Human Rights Act 1998;

(ii) If a judge decides the question in sub-section (1) in the negative he must order the person's discharge;

(iii) If a judge decides that question in the affirmative he must order the person to be extradited to the Category I Territory in which the Warrant was issued;

(iv) If a judge makes an Order under sub-section 3 he must remand the person in custody or on bail to wait for his Extradition to the Category I Territory;

(v) If the person is remanded in custody, the appropriate court may later grant bail.

[11] In addition to the matters raised in his affidavit concerning compatibility with his Human Rights the Requested Person raised an issue under Section 25 of the Extradition Act 2003 asserting that his physical or mental condition is such that it would be unjust or oppressive to extradite him. Section 25 provides as follows:

25 Physical or mental condition

(i) This section applies if at any time in the extradition hearing it appears to the judge that the condition in sub-section (2) is satisfied;

(ii) The condition is that the physical or mental condition of the person in respect of whom the Part I warrant is issued is such that it would be unjust or oppressive to extradite him;

(iii) The judge must –

(a) Order the person's discharge or

(b) Adjourn the extradition hearing until it appears to him that the condition in sub-section (2) is no longer satisfied.

The Human Rights issues:

[12] Both in his affidavit and in the submissions made on his behalf by counsel the requested person contends that his extradition to Poland on foot of this warrant would be incompatible with Article 3 and Article 8 of the Convention. The case made by Mr Szysler is that if returned to serve his sentence he would be especially vulnerable and would be targeted within the prison and subjected to violence putting his life and limb at risk. Secondly he contends that the conditions existing in the prison where he is likely to serve out his sentence, if returned to Poland, are such that to hold him in detention in such prison would amount to a breach of Article 3.

[13] The requested Person further argues that he enjoys a stable family life having lived in Northern Ireland for a period of five and a half years and that to extradite him to Poland to serve his sentence would be a breach of his right to family life under Article 8 as it would be disproportionate for him to be returned to Poland to serve his sentence

in circumstances where he has established a stable family life within Northern Ireland.

[14] The principle that a party to extradition proceedings may raise issues under Article 3 such that engage the responsibility of the extraditing State was authoritatively established by the European Court of Human Rights in ***Soering –v- United Kingdom [1989] 11 EHRR 439***. This principle and the principle that compatibility of extradition with other Articles of the Convention may be engaged, was considered by the House of Lords in ***R (Ullah) –v- Special Adjudicator [2004] 2 AC 323*** where Lord Bingham explained the ambit of this principle at paragraph 24:

> ***"While the Strasbourg jurisprudence does not preclude reliance on Articles other than Article 3 as a ground for resisting extradition or expulsion it makes clear that successful reliance demands presentation of a very strong case. In relation to Article 3 it is necessary to show strong grounds for believing that the person, if returned, faces a real risk of being subjected to torture or to inhumane or degrading treatment or punishment ... Where reliance is placed on Article 6 it must be shown that a person has suffered or risks suffering a flagrant denial of a fair trial in the Receiving State ... Successful reliance on Article 5 would have to meet no less exacting a test. The lack of success of applicants relying on Articles 2, 5 and 6 before the Strasbourg Court highlights the difficulty of meeting a stringent test which that court imposes. This difficulty will be no less where reliance is placed on Articles such as 8 or 9 which provide for the striking of a balance between the right of the individual and the wider interest of the community even in a case where a serious interference is shown. This is not a balance which the Strasbourg Court ought ordinarily to strike in the first instance, nor is it a balance which that court is well placed to assess in the absence of representations by the receiving State whose laws, institutions or practices are the subject of criticism. On the other hand the removing State will always have what will usually be strong grounds for justifying its own conduct: the great importance of operating a firm and orderly immigration control in an expulsion case; the great desirability of honouring extradition treaties made with other States".***

[15] Article 3 provides that "no-one shall be subjected to torture or inhuman and degrading treatment or punishment". The protection provided by Article 3 is absolute. "Torture" encompasses deliberate inhuman treatment causing very severe and cruel suffering, whether physical or mental – see ***Ireland –v- United Kingdom [1978] 2 EHRR 25***. Maltreatment or mistreatment falling short of torture must reach a

minimum level of severity to breach Article 3 and in determining whether the threshold has been crossed, all the circumstances, including the nature and context of the treatment, the manner of its execution, its duration and the physical and mental effects, the sex, age and state of health of the victim must be taken into account.

[16] The burden of establishing that Article 3 or 8 is engaged lies with the defendant – see ***Aziz –v- Secretary of State for the Home Department [2003] EWCA 118***.

[17] In circumstances where the requesting State is a signatory of the European Convention the requested Person has to present very clear evidence of the likelihood of an Article 3 violation. In ***Boudhiba the Central Examining Court No 5 of the National Court of Justice, Madrid, Spain [2006] EHHC*** Smyth LJ at paragraph 48 stated the requirements as follows:

(i) ***" ... Before this court could hold that the appellant's extradition would be incompatible with his Human Rights, there would have to be very clear evidence that such a violation was likely. He submitted that we should start from the position that Spain is a signatory of the European Convention on Human Rights and that compliance should be expected. The workings of the Spanish legal and prison systems are subject to the control of the Spanish court and to the European Court of Human Rights in Strasbourg. Spain has an independent legal profession. If the anecdotal evidence produced to this court were to have real foundation, one would expect to see cases of Article 3 breaches reported from Strasbourg".***

[18] In ***Swadi –v- Italy [2008] ECHR*** the Grand Chamber underlined these principles in the following terms:

> ***"In order to determine whether there is a risk of ill-treatment the court must examine the foreseeable consequences of sending the applicant to the receiving country bearing in mind the general situation there and his personal circumstances.***
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> ***To that end as regards the general situation in a particular country the court has often attached importance to the information contained in recent reports from independent international Human Rights protection associations such as Amnesty International or Government sources including the US State Department ... At the same time it is held that the mere possibility of ill treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 and that, where the sources available to it describe a***

general situation an applicant's specific allegations in a particular case require corroboration by other evidence.

With regard to the material deed the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the contracting State at the time of expulsion ... accordingly while it is true that historical facts are of interest insofar as they shed light on the current situation and the way it is likely to develop, the present circumstances are decisive."

[19] More recently the European Court of Human Rights considered the case of an Iranian who having travelled via Greece claimed asylum in the United Kingdom. The UK Authorities returned the applicant to Greece who accepted him as an asylum seeker but the applicant challenged the decision to return him to Greece on the grounds that there was a risk that he would be moved on from Greece to an unsafe country or that his treatment in Greece would be in breach of Article 3. In ***KRS –v- United Kingdom [2009] 48 EHRR SE8*** the Court said as follows:

"The court recalls in this connection that Greece as a Contracting State, has undertaken to abide by its Convention obligations and to secure to everyone within their jurisdiction the rights and freedoms defined therein, including those guaranteed by Article 3. In concrete terms, Greece is required to make the right of any returnee to lodge an application with this court and Article 34 of the Convention (and request interim measures under Rule 39 of the Rules of the Court) both practical and effective. In the absence of any proof to the contrary, it must be presumed that Greece will comply with that obligation in respect of returnees including the applicant. On that account, the applicant's complaints under Article 3 and 13 of the Convention arising out of his possible expulsion to Iran should be the subject of a Rule 39 Application lodged with the court against Greece following his return there, and not against the United Kingdom. Finally, in the court's view the objective information before it on conditions of detention in Greece is of some concern, not least giving Greece's obligation under Council Directive [2003/9/EEC] and Article 3 of the Convention. However, for substantially the same reasons the Court finds that where any claim under the Convention to arise from those conditions, it should also be pursued first with the Greek Domestic Authorities and thereafter in an application to this court".

[20] This portion of the court's judgment has received consideration in the Divisional Court in England in ***R (Jan Rot) –v- District Court of Lublin, Poland [2010] EWHC 1820*** where Mitting J expressed the view

that an Extradition Court is not required to address the question as to whether the Prison System and Authorities in a Category I State would be able to provide protection for a Requested Person from himself or from his fellow prisoners.

> ***"Para 11-Considerations which apply in a removal case apply with equal or greater force in an Extradition case. There is a compelling public interest for Category I Convention States in seeing their own criminal law upheld in relation to those who may have infringed it. The European Arrest Warrant system is intended to provide an effective means of seeing that that important public interest is upheld without undue delay. Category I States can be taken to have accepted between themselves that conditions of detention, and the adequacy of fairness of criminal justice systems in such States, will not be required to be examined by other States when considering extradition applications by them. For those reasons and in my opinion for the purposes of Articles 2, 3 and the relevant 8 the treatment of a person extradited to a Category I State which is a signatory of the Convention is a matter between the individual extradited and that State and not between the individual and the United Kingdom".***

[21] Mitting J has expressed the same principle in more explicit and forceful terms in a number of judgments delivered since.

[22] The second limb of the argument put forward on behalf of the Requested Person that his extradition to Poland would be incompatible with his Convention Rights is founded on Article 8 of the Convention. This is tied in with the argument advanced under Section 25 of the Extradition Act that by reason of the Requested Person's physical or mental condition it would be unjust or oppressive to extradite him.

[23] Dealing first with the Article 8 issue the Authorities referred to above whilst considering Article 3 of the Convention have made clear that in order to succeed on this ground a very high threshold needs to be crossed. In simple terms the Requested Person must demonstrate, by evidence, that the interference with his Human Rights under Article 8 and the consequences of such interference would be so extremely serious that the highly important public interest in ensuring orderly and appropriate extradition under the Act is outweighed. It has been recognised that the Extradition Act and the process of extradition established by the Act and the Framework Document serves an important role in the justice process, the prevention of crime and thereby the protection of the public. This inevitably brings into consideration an important public interest element and this public interest should only be outweighed where some exceptional and

compelling feature or a combination of features is present. The interference with family life would require to be shown to be disproportionate to the important legitimate aim and objective that extradition serves.

[24] In ***Norris –v- United States [2010] 2 WLR 572*** Lord Kerr of Tonaghmore, at paragraphs 136-138 explained how the balance falls to be considered:

> ***"While it will be, as a matter of actual experience, exceptional for article 8 rights to prevail, it seems to me difficult, in light of Huang v Secretary of State for the Home Department [2007] 2 AC 167, to revert to an exceptionality test – a test which, at times, Mr Perry appeared to invite us to rehabilitate. But it is entirely possible to recognise that article 8 claims are only likely to overcome the imperative of extradition in the rarest of cases without articulating an exceptionality test. This message does not depend on the adoption of a rubric such as 'striking or unusual' to describe the circumstances in which an article 8 claim might succeed. The essential point is that such is the importance of preserving an effective system of extradition, it will in almost every circumstance outweigh any article 8 argument. This merely reflects the expectation of what will happen. It does not erect an exceptionality hurdle.***
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> ***I accept Mr Sumption QC's argument that the starting point must be that article 8 is engaged and that it is then for the state to justify the interference with the appellant's rights. But, because of the inevitable relevance of the need to preserve an effective extradition system, that consideration will always loom large in the debate. It will always be a weighty factor. Following this line, there is no difficulty in applying the approach prescribed in para 12 of EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41; [2009] AC 1159. On this analysis the individual facts of each case can be evaluated but that evaluation must perforce be conducted against the background that there are substantial public interest arguments in play in every extradition case. That is not an a priori assumption. It is the recognition of a practical reality.***
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> ***There is nothing about the facts of this case that distinguishes it significantly from most cases of extradition, or indeed from most cases of white collar crime. If Mr Norris were prosecuted in this country, no doubt many of the fears, apprehensions and effects on his and his wife's physical and mental health would accrue in any event. The added dimension of having to face trial and possible incarceration in America is, of course, a significant***

feature but not substantially more so than in many other cases of extradition. The only matter of moment is the delay that has occurred from the time that extradition was first sought but, as has been pointed out, this was to some extent created by the actions of the appellant himself and is, in any event, not of sufficient significance that it cannot be outweighed by the need to preserve effective extradition."

[25] In ***Launder –v- United Kingdom 27279/95*** the Commission held as follows:

> ***"The Commission finds that the appellant's Extradition would amount to an interference with his family life, it being common ground that his wife currently lives in the United Kingdom. However it appears undisputed that the decision to extradite the applicant complied with the formal requirements of United Kingdom law ...Furthermore, the Commission finds that the decision to extradite the applicant has a legitimate aim, mainly the prevention of disorder or crime. As regards the question whether the interference was necessary, the Commission recalls that the notion of necessity implies a pressing social need and requires that the interference at issue be proportionate to the legitimate aim pursued ... The Commission considers that it is only in exceptional circumstances that the extradition of a person to face trial on charges of serious offences committed in the Requesting State would be held to be an unjustified or disproportionate interference with the right to respect for family life.***

[26] Allied to the submission made by the Requested Person under Article 8 is the contention that due to his physical and mental condition his extradition to Poland would be unjust or oppressive. In ***Boudhiba v The Central Examining Court No 5 of the National Court of Justice, Madrid, Spain [2006] EWHR 167*** Smyth L J considered the court's function in relation to Section 25 and said:

> ***"... The court should keep its eye firmly on the statutory question posed by Section 25. The question is not whether the appellant is suffering from a psychiatric disorder with or without the added disadvantage of low intelligence; it is whether by reason of his mental condition it would be unjust or oppressive to extradite him".***

[27] More recently the threshold which needs to be crossed by the Requested Person in opposing his extradition on this ground has been considered in ***Spanovic –v- Croatia [2009] EWHC*** where the court said:

> ***"35. Whether any particular person suffers from a mental condition which renders it unjust or oppressive to extradite him must necessarily be a value judgment upon the facts of the particular case but some assistance is to be found in the authorities, which make it clear that a very high threshold is set before a person's physical or mental condition will make it unjust or oppressive to extradite him.***
>
> ***39. It is plain to us, that the bar is set very high, and the graver the charge the higher the bar, in that there is a heightened public interest in the alleged offender being tried: provided, of course, that the trial and conditions in which he will be held will be fair."***

[28] Having reviewed the relevant authorities I turn to the evidence put before me in this application. In his affidavit Mr Szysler avers that if he were to be returned to Poland he could not cope with going to prison, would have to avoid the gang that he had previously been involved with and accordingly would face the risk of serious injury or even death. He further asserts that the conditions in prison are extremely bad with the main problems being overcrowding and gang violence. He avers that when he was held there, previously, his mental condition deteriorated to such an extent that he was suicidal. He further asserts that because he pleaded guilty and thereby did not play by the gang rules he is certain to become a target. He claimed that he saw several incidents of severe violence and on one occasion a prisoner was very badly beaten and smeared with human excrement.

[29] In relation to his family circumstances he states that he has lived in Northern Ireland for more than five years with his wife and 18 year old son and that he considers Northern Ireland to be his home and has established his life here.

[30] No evidence was introduced or presented to this court indicating any medical condition suffered by the Requested Person. Ample opportunity was available to him and his advisors to arrange a medical and adduce evidence if it was considered necessary and appropriate. To that extent the only evidence available to the court, concerning his medical or psychological condition was given by the Requested Person himself. In the absence of supporting medical evidence it is difficult to see how any court could be satisfied that the high threshold established by the authorities as necessary to establish a breach of Mr Szysler's Article 3 rights had been or might be crossed.

[31] Mr Szysler gave evidence of being detained in a cell which he described as being approximately 9 metres square, shared with five or six people and that for approximately two months he had to sleep on

the floor. He stated that he could not stand it and was seen by a doctor because he had suicidal thoughts. He attributed this to the other people and conditions in the prison. He stated that other inmates spoke a form of slang and communicated amongst themselves in this "special language". He did not belong to this group and these people would "call us names, treat us as stupid and beat us up". He claimed that because he had been selling drugs and had admitted selling drugs others in the gang would create problems for him. He asserted that he had been referred to a psychologist and that a doctor had referred him for observation. On the second day of observation he was taken to see a second doctor who advised him that he had problems "accepting being in prison and nothing more". He was not given any treatment and was only seen by doctors on four occasions. In his own examination in chief he said the doctors asked him questions but that he did not co-operate and declined to answer any of the doctors' questions. He informed the court that the diagnosis provided by the doctors who examined him was to the effect that he had difficulty adjusting to prison life because he was not going anywhere and had never been in prison before. His wife had difficulty arranging visits and he could not regularly phone home.

[32] Mr Szysler was the subject of cross-examination and in the course of this explained that he had been in prison for eleven months and then was released on bail. After eleven months in custody he discussed his case with his lawyers and the prosecution and indicated his wish to plead guilty to trafficking drugs. In relation to the people carrying tattoos and speaking a form of slang to whom he had referred in his affidavit but not in his evidence in chief, he accepted that these were not members of gangs but were frequent offenders.

[33] In relation to his co-offenders, those involved in trafficking drugs with him, he accepted that he had had no contact with any of them. Those who had gone to prison had all served or completed their sentence and he did not know anything about their whereabouts. He accepted that if he was returned to custody in Poland none of his co-accused would be serving sentences with him.

[34] In his evidence before the court he did not mention being threatened by prisoners with tattoos and did not say that he feared any gang members as he had asserted in his affidavit and was asked to explain this. He could not give an explanation. He confirmed that he himself had never been the subject of violence in prison but had been called names by other fellow prisoners. He stated that he would not allow anyone to abuse or beat him up and that he could use self-defence and was capable of looking after himself.

CONCLUSION:

[35] It is clear from the authorities considered in the course of this judgment that a party resisting extradition under Article 3 of the Convention must produce evidence to show there are strong or substantial grounds for believing that there is a real risk of him being subjected to torture or other inhuman or degrading treatment. He must satisfy the court that there is a real risk of him being subjected to torture or other degrading treatment if he is returned.

[36] Mr Ritchie argues that this court does not have to consider this issue and should follow what he contends is the approach of Mitting J to the judgment of the court in ***KRS –v- United Kingdom*** by leaving these issues to the national court or the Strasburg court. With all due respect to Mr Ritchie I am not persuaded that this is the correct approach or that the judgements of Mitting J go as far as he contends. If this were to be the effect of Mitting J's approach then I would not be prepared to endorse or follow it.

[37] Section 21 specifically requires this court to be satisfied that extradition is compatible with the Requested Person's Human Rights. This safeguard is in addition to the requirement to act in accordance with Convention rights imposed on the court under Section 6 of the 1998 Act. In my view it would be a failure on the part of this court to comply with its duty under Section 21 if it omitted to take account of evidence that Article 3, Article 8 rights or other Convention Rights are engaged. I am satisfied that this court cannot abrogate its responsibilities in this area by merely advising the Requested Person that he has a remedy against the Requesting State, where it is a signatory to the Convention or merely leaving him to take his own course, domestically or internationally under the Convention.

[38] As has been said repeatedly, courts in this jurisdiction should recognise that other Category 1 states have mature democracies and legal systems, are aware of their Convention obligations and are subject to scrutiny by their legal professions, media and active international and domestic organisations that monitor their compliance with those Convention obligations. To that extent this court is entitled to expect and assume that the administration of justice and all that this involves is compliant. Having said this I take the view that where compelling evidence of a breach or potential breach of Convention Rights is disclosed in evidence this court must take account of that in determining whether or not extradition is compatible.

[39] In this case I do not need to rely upon the opinions expressed by Mitting J as I am satisfied that on the hearing before me Mr Szysler has

not produced any evidence that would indicate that his Extradition would be incompatible either under Article 3 or Article 8.

[40] I have considered carefully the submissions made concerning the Requested Person's health and the effect that Extradition might have upon this. No medical evidence of any sort was adduced before me despite ample opportunity for such medical evidence to be obtained and presented to the court. Mr Szysler has not identified any condition which would make his extradition either unjust or oppressive. In his own evidence Mr Szysler indicated that the diagnosis made by doctors in Poland was to the effect that he was having difficulty and not unnatural difficulty of adjusting to prison life. That is not an uncommon feature when people are legitimately and lawfully sent into prison and in my view this does not come close to meeting the threshold required under Section 25 of the Act.

[41] As regards the assertion that he is at risk of injury or violence from others in the prison system the evidence was both vague and contradictory. Those co-accused who might pose any risk to him are no longer within the prison system, they are not serving sentences and are unlikely to come into contact with the Requested Person. In addition Mr Szysler made it perfectly clear that he was more than a match for any fellow inmate in the prison, none had ever posed a threat of violence to him and in his own terms they would not do so because he was capable of defending himself. Finally, on this issue, Mr Szysler failed to produce any evidence that the authorities in Poland could not or would not provide him with adequate protection if a threat to his wellbeing arose.

[42] There is no doubt that Mr Szysler, his wife and son will miss each other if he is returned to serve a sentence in Poland. They would miss each other if he was sentenced to serve a period of imprisonment for offences committed in this jurisdiction. The effect on family life was acknowledged by Lord Kerr in ***Norris*** but such limited interference with family life falls far short of that required to outweigh the legitimate aim and purpose of extradition. This is particularly so in a case such as this where the offence for which he has been convicted is so serious.

[43] I am therefore satisfied that:

- There is nothing that has been presented to me concerning the physical or mental condition of Mr Szysler that would warrant a conclusion that it would be unjust or oppressive to extradite him or which would operate as a bar under Section 25 of the 2003 Act;

- There are no grounds upon which I could find that the extradition of Mr Szysler would be incompatible with the defendant's Convention Rights and accordingly I order his extradition to Poland.