IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN :

Circuit Court in Katowice, Poland **Requesting Judicial Authority**

v

Paulina Nowak **Requested Person**

RULING

Background and Issues raised :

1. This is a request by the above Polish Requesting Judicial Authority (the RA) for the extradition of Paulina Nowak (the RP) to face criminal prosecution in respect of the allegations set out in the European Arrest Warrant (EAW) upon which this extradition request is based. The brief facts of the allegations are that between 24 November 2012 and 6 January 2013 the RP committed 12 offences of theft from "summer houses" on "allotment gardens".

2. The EAW was issued on 11 August 2014 and certified by the National Crime Agency on 7 May 2015. The RP was arrested and appeared at the Westminster Magistrates' Court when these proceedings were formally opened. At that first hearing, matters relating to s.4 (preliminary issues regarding the EAW) and s.7 (identity) of the Extradition Act 2003 (the Act) were dealt with. The RP was released on conditional bail and has remained on bail throughout. She has been legally represented and assisted by a court appointed interpreter during the course of these proceedings.

3. At the full hearing on 11 February 2016, the Requesting Judicial Authority was represented by Mr Seifert and the RP by Ms Westcott.

4. The RP challenges extradition on the basis that i) the EAW does not comply with s.2(2) of the Act; and ii) proportionality and incompatibility with human rights under s.21A if this is an accusation warrant.

Evidence

5. I have read the bundle which includes the skeleton arguments on both sides, the proofs of evidence of the RP, various letters and responses to requests for further information, a s.7 report from a social worker and a psychological report from Joanna Beazley, M.Sc.

6. The report by Eric Yuninui, the Social Worker employed by Northamptonshire County Council and dated 1 September 2015 gives full details of the family composition and assesses the various possibilities if the RP were to be separated from the children. The conclusion at the time of that report was that the uncle (see below) would be further assessed regarding his accommodation but the local authority would support the children being placed in his care.

7. The psychological report dated 20 January 2016 is a very detailed and useful piece of work and I intend no disrespect to that document by merely referring to the fact that I have read it and have noted the conclusions therein. In short, the report does not seem to suggest that the extradition of the RP would be disastrous to the welfare of the children as long as certain safeguards were in place in the event of them being placed in foster care. I also take note of the expert's discussion with the RP about the apparent abuse suffered by the child Wiktoria.

8. I have heard live evidence from the RP who has adopted her proofs as her main evidence-in-chief. In those proofs, the RP confirms the background to the matters and how she came to the UK in June 2013. She initially joined her husband Mr Tomasz Jurkowski but he was returned to Poland in November 2015 having been held in custody in the UK since February 2014. She is therefore ostensibly a single mother and there are 3 children of the family, Wiktoria born 9 October 2008, Kacper born 24 June 2010 and Adrian born 27 July 2014. She gives details of the offences and her subsequent arrest in or around January 2013. She believes that she admitted the offences and received a suspended prison sentence. She did not think that she would have to attend any further court hearings and came to the UK believing that the matter had finished. In her second proof she confirms her relationship with her half-sister Milena and states that she would not be in a position to look after the children. She states that, apart from the allegations which are the subject of the EAW she has no other convictions. She has been provided with emergency accommodation by Northamptonshire Council. She explains why her Uncle Wlodzimierz Kutyla would not be able to look after the children. She gives her explanation as to the information contained in the response to a request for further information dated 11 September 2015.

9. In answer to supplementary questions, the RP confirmed that she has now been placed in a flat by the local authority and is guaranteed a council house in the near future. She is in receipt of benefits.

10. In cross-examination, the RP was referred by Mr Seifert to the further information document dated 11 September 2015 and she accepted that she had been interviewed on 3 occasions and must have accepted her guilt on 8 of the 12 allegations. She conceded that she knew she should have attended court on 31 July 2013 having collected the summons on 16 June 2013. She was already in the UK by the time of that court hearing. She confirmed that her uncle was the only family member in the UK. Her family in Poland consisted of her mother who is an alcoholic and her half-sister who is 19 years old and, she stated, neither of them could look after the children.

11. When re-examined by Ms Westcott, the RP maintained that she had been told at the police station that she would receive a suspended sentence and so she didn't believe she needed to attend court on 31 July 2013. Her uncle is in full time work and rents a room in a house in which other people live.

Submissions

12. Ms Westcott on behalf of the RP relied on her written submissions, but further submitted that the promise of council accommodation further enhances the suggestion of extradition being incompatible with the RP's article 8 rights and those of her children. In her written submissions, Ms Westcott simply suggests that the EAW is at best inconclusive as to whether the RP has been convicted or is awaiting trial. She also raises the issue under s.2(4)(b) or s.2(6)(c) regarding the necessity for the EAW to contain "particulars of any other warrant issued in the Category 1 territory in respect of the offence. I deal with this at paragraph 15 below.

If this EAW is an accusation warrant, then Ms Westcott points the court to the guidance in the case of ***Miraszewski*** (see below for full citation and relevant passages). She particularly points to the likely penalty in the event of conviction being a non-custodial sentence. She also points to the apparent lack of action by the RA in relation to a request under s.21B.

In her submissions regarding the RP and her family's article 8 rights, Ms Westcott suggests that *"this is one of the unusual cases where extradition can properly be said to be "seriously damaging" to the children's interests"*. Ms Westcott additionally submits that the RP travelled to the UK openly and before the issue of any Polish domestic warrant and has lived openly in this jurisdiction.

13. Mr Seifert on behalf of the RA relied on his written argument and further suggested that there was no requirement for there to be any further adjournment in relation to any s.21B application. In his written submissions, Mr Seifert refers to the further information document dated 11 September 2015 which details what happened in the preparatory proceedings and the 3 interviews with the RP as a suspect. He notes what that document says about the RP's failure to attend a hearing on 31 July 2013 and a subsequent hearing on 15 October 2013 where again the RP did not attend at it was clear that the she had not been arrested as hoped and, ultimately, this lead to the EAW being issued on 11 August 2014. In paragraphs 18-26 of his written submissions, Mr Seifert details the information provided in the documents dated 28 September 2015 and 17 December 2015 and I have taken note of these documents as well.

In relation to the challenge under s.2(2) of the Act, Mr Seifert's position is dealt with at paragraph 14 below and I have quoted from the case referred to by the advocates in this regard: ***Asztalos v Hungary*** **[2010] EWHC 237 (Admin)**.

Regarding proportionality, Mr Seifert contends that the matters in the EAW cannot be considered as lacking gravity. In the absence of anything further from the RA the court can readily assume that there are no less coercive measures available. He adds that it is by no means clear that the RP will receive a non-custodial sentence. He proposes a number of factors in the balancing exercise under article 8.

The s.2 Challenges and the Conclusions Thereon

14. s.2(2) Challenge

This challenge is based on the assertion that the EAW does not give adequate particulars to allow this court to determine whether the RP is accused or whether she has been convicted and is awaiting sentence. Ms Westcott submits that even reading the EAW as a whole does not solve the problem that the failure to comply with s.2(2) renders the warrant void *ab initio*. Mr Seifert in his written argument suggests that Box B of the warrant clearly shows that there was no enforceable judgment at the court hearing of 18 December 2013, Box C does not indicate that any sentence has been imposed and Box D refers to "pre-trial detention".

In the case of ***Asztalos***, Lord Justice Aikens stated that: *"neither the Framework Decision, the Annex to it, nor the 2003 Act stipulate that when an EAW is issued, the alternative on the front page that is not applicable (ie. either "for the purposes of conducting a criminal prosecution" or "for the purpose of executing a custodial sentence or detention order") has to be deleted, depending on the purpose for which the EAW was issued....*
In our view the fact that the inappropriate option has not been deleted cannot, by itself, make the EAW invalid because it does not comply with ***section 2(2). Section*** *2(2) of the Act does not say that if an EAW is an "accusation case" warrant then all references to sentence or detention must be deleted. Nevertheless, it is imperative that, upon examination of the EAW as a whole, it is clear that it is a request for surrender of the requested person either for the purposes of conducting a prosecution or for the purpose of executing a sentence or detention order. In short, it must be clear from an examination of the EAW as a whole that is a warrant in an "accusation case" or a "conviction case"."*

Is important that I confirm my decision on this point at this stage, as that decision will predicate whether I am dealing with any human rights issues under s.21 or s.21A and also, if this is an accusation warrant then the court must deal with proportionality under s.21A. I accept that the EAW is not perhaps as clear as it might be, but I am persuaded most of all by the wording in Box D 2 where it is stated that *"Paulina Nowak was not present when the court imposed pre-trial detention on her as she was in hiding from the prosecution agencies. After surrender she shall have the right to appeal against the decision on imposing pre-trial detention to the court of higher instance"*. I am satisfied that in the light of this and reading the EAW as a whole, this is an accusation warrant and I will deal with s.21A below.

15. s.2(4)(b) Challenge

The warrant should contain *"particulars of any other warrant issued in the Category 1 territory in respect of the offence"*. Ms Westcott raises this although she concedes that the current authorities are against her but in view of an imminent decision by the Supreme Court she reserves her position. Mr Seifert refers to the current settled law and the fact that the EAW clearly mentions the domestic warrant which forms the jurisdictional basis for the issue of the EAW, i.e. the decision of 18 December 2013.

The meaning of the words *"any other warrant"* was considered by the Supreme Court in ***Louca v Germany*** **[2009] UKSC4**. It was held that the reference was not to a previously issued EAW, but to domestic arrest warrants or other decisions on which the EAW was founded as authority for its issue

This issue was decided in favour of the JA in the case of ***Poland v Wojciechowski*** **[2014] EWHC 412 (Admin)** and pending the decision of the Supreme Court on the point I am bound to follow this authority and therefore reject the argument under this sub-section.

16. 21A Person not convicted: human rights and proportionality

In an accusation warrant such as in this case, if the judge decides that there are no bars to extradition under s.11, s.11A states that if the person is accused of the commission of the extradition offence but is not alleged to be unlawfully at large after conviction of it, the judge must proceed under section 21A, the relevant parts of which are as follows:
(1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D")—
(a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;
(b) whether the extradition would be disproportionate.
(2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
(3) These are the specified matters relating to proportionality—
(a) the seriousness of the conduct alleged to constitute the extradition offence;
(b) the likely penalty that would be imposed if D was found guilty of the extradition offence;
(c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.
(4) The judge must order D's discharge if the judge makes one or both of these decisions—
(a) that the extradition would not be compatible with the Convention rights;
(b) that the extradition would be disproportionate.
(5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—
(a) that the extradition would be compatible with the Convention rights;
(b) that the extradition would not be disproportionate.

17. Article 8 Challenge

Article 8 states: *"1. Everyone has the right to respect for his private and family life, his home and correspondence. 2. There shall be no interference by a public authority with the exercise of this right except as 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."

18. The Supreme Court in ***Norris v Government of USA*** **[2010] UKSC 9** unanimously held that the public interest in upholding bilateral extradition treaties would be "seriously damaged" if those who faced serious (as opposed to trivial) offences and who had families akin to Mr Norris were to preclude extradition from taking place. They made clear that the requested person would have to demonstrate that the impact of extradition went beyond the normal and often unfortunate consequences of extradition. The threshold in an Article 8 challenge is set high and there would have to be "*striking and unusual*" facts for such a challenge to succeed. ***Norris*** decided that there should be no absolute rule that extradition would always be proportionate in cases where the art 8 rights of the requested person and his family were engaged. In para 56 of his judgment Lord Phillips of Worth Matravers, with whom all other members of the court agreed, said:
"The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves.... I can see no reason why the District Judge should not, when considering a challenge to extradition founded on article 8, explain his rejection of such a challenge, where appropriate, by remarking that there was nothing out of the ordinary or exceptional in the consequences that extradition would have for the family life of the person resisting extradition. 'Exceptional circumstances' is a phrase that says little about the nature of the circumstances. Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition. A judge should not be criticised if, as part of his process of reasoning, he considers how, if at all, the nature and extent of the impact of extradition on family life would differ from the normal consequences of extradition."

It was accepted that the effect on close family members was relevant and could be a "*cogent consideration*" and indeed Lord Phillips stated in paragraph 65 "... *if extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge per s.87 of the 2003 Act*".

At paragraph 52 His Lordship said this: "*It is of critical importance in the prevention of disorder and crime that those reasonably suspected of crime are prosecuted and, if found guilty, duly sentenced. Extradition is part of the process for ensuring that this occurs, on a basis of international reciprocity. It is instructive to consider the approach of the Convention to dealing with criminals or suspected criminals in the domestic context..... In practice it is only in the most exceptional circumstances that a defendant would consider even asserting his article 8 rights by way of challenge to remand in custody or imprisonment..... Normally it is treated as axiomatic that the interference with article 8 rights consequent upon detention is proportionate."*

At paragraph 63, His Lordship went on to say: *"If, however, the particular offence is at the bottom of the scale of gravity, this is capable of being one of a combination of features that may render extradition a disproportionate interference with human*

rights. Rejecting an extradition request may mean that a criminal never stands trial for his crime. The significance of this will depend upon the gravity of the offence."

19. ***HH v Italy*** **[2012] UKSC 25** summarised the key principles previously established in ***Norris*** as follows (per **Lady Hale** at paragraph 8) :
"(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 UK 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 committed.
(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."

20. Lord Justice Judge in same case said this: *"When resistance to extradition is advanced...on the basis of the article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence: any other approach would be inconsistent with the principles of international comity. At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration or the level of sentences or the arrangements for prisoner release which we are informed are likely to operate in the country seeking extradition. It certainly does not follow that extradition should be refused just because the sentencing court in this country would not order an immediate custodial sentence: however it would become relevant to the decision if the interests of a child or children might tip the sentencing scale here so as to reduce what would otherwise be an immediate custodial sentence in favour of a non-custodial sentence (including a suspended sentence)."*

21. In the case of ***Poland v Celinski and Ors*** **[2015] EWHC 1274 (Admin)**, an important Divisional Court decision in which the Lord Chief Justice analysed the plethora of article 8 challenges to extradition and said this at paragraphs 7-15:

7. It is clear from our consideration of these appeals that it is important that the judge in the extradition hearing bears in mind, when applying the principles set out in Norris and HH, a number of matters.

8. First, HH concerned three cases each of which involved the interests of children: see in particular the judgment of Baroness Hale at paragraphs 9-15, 24-25, 33-34, 44-48, 67-79, 82-86; Lord Mance at paragraphs 98-101; Lord Judge at paragraphs 113-117, 123-132; Lord Kerr at paragraphs 144-146; Lord Wilson at paragraphs 153-156 and 170. The judgments must be read in that context.

9. Second the public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice. We would expect a judge to address these factors expressly in the reasoned judgment.

10. Third the decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect. Part I of the 2003 Act gave effect to the European Framework Decision of 13 June 2002; it replaced the system of requests for extradition by Governments (of which the judicial review before the court in respect of the Polish national is a surviving illustration). The arrangements under Part I of the 2003 Act operate between judicial authorities without any intervention of governments. In applying the principles to requests by judicial authorities within the European Union, it is essential therefore to bear in mind that the procedures under Part I (reflecting the Framework Decision) are based on principles of mutual confidence and respect between the judicial authorities of the Member States of the European Union. As the UK has been subject to the jurisdiction of the CJEU since 1 December 2014, it is important for the courts of England and Wales to have regard to the jurisprudence of that court on the Framework Decision and the importance of mutual confidence and respect.

11. Fourth, decisions on whether to prosecute an offender in England and Wales are on constitutional principles ordinarily matters for the independent decision of the prosecutor save in circumstances set out in authorities such as A (RJ) [2012] 2 Cr App R 8, [2012] EWCA Crim 434; challenges to those decisions are generally only permissible in the pre-trial criminal proceedings or the trial itself. The independence of prosecutorial decisions must be borne in mind when considering issues under Article 8.

12. Fifth, factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting state will take into account; it is therefore important in an accusation EAW for the judge at the extradition hearing to bear that in mind. Although personal factors relating to family life will be factors to be brought into the balance under Article 8, the judge must also take into account that these will also form part of the matters considered by the court in the requesting state in the event of conviction...

14. It is also clear, as some of these appeals illustrate:
i) The basic principles to which we have referred have not always been taken properly into account at the extradition hearing.
ii) A structured approach has not always been applied to the balancing of the factors under Article 8. This is essential, because each case turns on the facts as found by the judge and the balancing of the considerations set out in Norris and HH. We suggest at paragraph 15 below, an approach which would fulfil this requirement.
iii) Decisions of the Administrative Court in relation to Article 8 are often cited to

the court. It should, in our view, rarely, if ever, be necessary to cite to the court hearing the extradition proceedings or on an appeal decisions on Article 8 which are made in other cases, as these are invariably fact specific and in individual cases judges of the Administrative Court are not laying down new principles. Many such cases were referred to in the skeleton arguments. We have referred to none of them in this judgment, as the principles to be applied are those set out in Norris and HH. If further guidance on the application of the principles is needed, such guidance will be given by a specially constituted Divisional Court or on appeal to the Supreme Court. It is not helpful to the proper conduct of extradition proceedings that the current practice of citation of authorities other than Norris and HH is continued either in the extradition hearing or on appeal.

So far as the balancing of the various factors is concerned, the Lord Chief Justice said this: *"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.*

The approach should be one where the judge, after finding the facts... 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."

22. Proportionality

In considering proportionality under s.21A, I have had regard to the Guidance issued by The Lord Chief Justice under section 2(7A) of the Extradition Act 2003 by means of Criminal Practice Directions Amendment No. 2 [2014] EWCA Crim 1569.

The table in 17A.5 gives a list of the categories of offences and examples which includes: *"minor thefts (not robbery/burglary or theft from the person) with examples of thefts of low monetary value and there is low impact on the victim or indirect harm to others, e.g. theft of food from supermarket, theft of small amount of scrap metal from company premises, theft of a very small sum of money".*

23. In ***Miraszewski and Ors v Poland*** **[2014] EWHC 4261 (Admin)**, Lord Pitchford analysed the section and stated:

"I accept.....that it is appropriate for judges to approach the Lord Chief Justice's guidance as identifying a floor rather than a ceiling for the assessment of seriousness. The test for the designated authority is whether "it is clear...that a judge proceeding under section 21A would be required to order the person's discharge on the basis that extradition would be disproportionate". The Lord Chief Justice's guidance is, it seems to me, deliberately aimed at offences at the very bottom end of the scale of seriousness about which it is unlikely there could be any dispute. It must be so, otherwise the judge's freedom to apply the statutory criteria of proportionality would be unlawfully fettered. The guidance states that in the identified cases the triviality of the conduct alleged would alone require the judge to discharge the requested person...[The Judge]may conclude that an offence is not serious even though it does not fall within the categories listed in the guidance. If so, the proportionality decision

may depend on the paragraph (b) or (c) factors. It is noticeable, for example, that none of the offences of violence to the person, even the least serious, is captured by the guidance, but the terms of paragraph 17A.2 ("the judge will determine the issue on the facts of each case as set out in the warrant, subject to the guidance in 17A.3 below") make it clear that other offences may be assessed by the judge as being non-serious or trivial offences."

The Learned Judge confirmed that s.21A creates two separate bars to extradition and that, although factors influencing an Article 8 balance under section 21A(1)(a) will overlap with an assessment of proportionality for the purpose of section 21A(1)(b), the two parts require separate consideration. He went on to state: *"Subsections (2) and (3) require a free standing judgment that (subject to the bracketed words in subsection (2)...)is formed upon consideration of, and only upon consideration of, the seriousness of the conduct alleged, the likely sentence and alternative methods of securing the requested person's attendance at the court of the Category 1 territory."*

In relation to the taking of less coercive measures, the Learned Judge said this: *"It would be a reasonable assumption in most cases that the requesting state has, pursuant to its obligation under Article 5 (3) ECHR, already considered the taking of less coercive measures. I accept ..... that there is an evidential burden on the requested person to identify less coercive measures that would be appropriate in the circumstances. Where the requested person has left the requesting state with knowledge of his obligations to the requesting state's authorities but in breach of them, it seems to me unlikely that the judge will find less coercive methods appropriate. On the other hand, as the Scott Baker report recognised at paragraph 5.153 there may be occasions when the less coercive procedure is appropriate. If the requested person fails to respond to those alternative measures the issue of a further warrant and extradition could hardly be resisted."*

Conclusions

24. I have considered the live evidence, all documents placed before me, the submissions by the parties and the authorities referred to by the parties and those which I consider are relevant to the issues.

25. In accordance with the guidance in ***Celinski*** I have undertaken a balancing exercise when considering the "pros" and "cons" of extradition in relation to the argument that extradition would not be compatible with the RP's article 8 rights.

26. **Factors that favour extradition**: the public interest in ensuring that extradition arrangements are honoured is very high. The European arrest warrant is a measure to simplify extradition procedures between member states of the European Union. It is based on the principle of mutual recognition by the member states of decisions in other member states and, in broader terms, of the mutual trust which member states have in the justice systems of each other. The allegations in the EAW (most of which are admitted by the RP) cannot be said to be at "the bottom end of the scale" and taken together must be regarded as serious.

27. **Factors that militate against extradition**: The family life of the RP and especially the effect upon the three children of her removal to Poland. There do not

appear to be any other family members or friends who could look after the children in the event of extradition and I am satisfied that the children would have to be looked after by the local authority, either under a voluntary accommodation agreement or by way of a care order. The RP's conduct in this jurisdiction has been beyond reproach and I have no evidence to suggest that she is a fugitive or has sought to evade justice.

28. In accordance with s.21A(3) of the Act and the guidance in ***Miraszewski*** I deal with the three specified matters as follows:

(a) the seriousness of the conduct alleged to constitute the extradition offence – although taken individually these allegations may not be the most serious of their type, as I have already mentioned in the article 8 balancing exercise, they cannot be said to be trivial.
(b) the likely penalty that would be imposed if D was found guilty of the extradition offence – whilst it is quite possible that a non-custodial sentence could be the outcome bearing in mind the nature of the offending and the personal mitigation of the RP, this is by no means a foregone conclusion.
(c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D – I agree with the submissions of Mr Seifert on this point and note that some attempt has been made to investigate the possibility of less coercive measures. There has been no positive assertion by the RA that they will deal with this matter other than by way of the EAW and I conclude that at this time there is no possibility of the RA taking less coercive measures.

I conclude therefore, that the argument under this part of s.21A does not favour the RP and extradition would not be disproportionate.

29. I therefore return to the article 8 argument. Having conducted the balancing exercise and whilst mindful of the public interest and all the other factors that would normally indicate that extradition should take place, I consider that this is one of those rare examples of that public interest being outweighed by the interference with the article 8 rights of the RP and, more particularly, her three young children. I bear in mind the fact that the children have been separated already from their father and the bond with their mother is likely to be even greater than normal as a result of that. I do not feel that any other family members could look after the children in the RP's absence and specifically rule out the uncle due to his age, his job and lack of suitable accommodation. The fact that the RP has now been guaranteed permanent accommodation by the local authority also weighs heavily in her favour.

30. Whilst I accept that the local authority would be bound to make arrangements for the children in the event of their mother's extradition, I am not satisfied that this outcome is an attractive proposition. The psychological report does not state in terms that the RP's extradition would be disastrous for the children but I take note of some of the conclusions in that report which would support the contention that extradition would be incompatible with the article 8 rights of this family. Ms Richards states that if the children "were to be separated from their mother this would have a further negative impact on their emotional wellbeing, given the upheaval they have already experienced over recent years" – **[para 10.1.1.]**. The report states "that in order to reduce the children's vulnerability, stability and consistency of their care is of utmost importance" – **[para 10.2.1.]**. There is no guarantee that, in the event of the RP's

extradition, these children would be placed together and this is another important consideration. Wiktoria in particular has suffered trauma and this would be further exacerbated to an extent which would be contrary to her welfare if her mother was to be extradited. Whilst extradition of a sole-caring parent can very often be justified, I conclude that in this case the effect upon these children goes beyond the emotional upheaval that would normally follow when extradition of that parent is ordered.

31. In the language of *Norris* and *HH* the adverse consequences for the children give rise to exceptional circumstances and the consequences of extradition would be exceptionally severe. There is no certainty about what would happen in the event of extradition but the risks involved are stark.

32. Due to the incompatibility with article 8 rights of this family as explained above, I Order that the Requested Person **Paulina Nowak** be **discharged** from these proceedings in accordance with **s.21A(4)** of the **2003 Act**.

District Judge (MC) Timothy Devas
APPROPRIATE JUDGE
08 March 2016