SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2020] SC EDIN 53

E33/20; E71/19; E43/20

JUDGMENT OF SHERIFF T WELSH QC

in the cause

THE LORD ADVOCATE ON BEHALF OF THE REPBULIC OF POLAND

Pursuer

against

(FIRST) MAGDALENA ZAGAJEWSKA, (SECOND) NATALIE ORZENCHOWSKA, (THIRD) ROBERT MYDLOWSKI

Defender

Pursuer: M Richardson QC, W Jajdelski Adv, Crown Office Edinburgh
Defender: F Mackintosh QC.; Dunne Defence, Edinburgh
C Mitchell QC, Goode and Stewart & Co Edinburgh
P Harvey Adv; Livingston Brown Glasgow

Edinburgh, 21 December 2020

The issue

[1] Three extradition cases have been conjoined for me to hear a common application to refer questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling. The questions [see [4] below] relate to the operation of the application of the Charter of Fundamental Rights [CFR] in the UK during the transition period following exit of the UK from the EU against the backdrop of a series of changes in the judicial structure and legal system in Poland, since 2015, which have given rise to apprehensions among requested persons and others that it is no longer possible to get a fair trial in Poland and accordingly, requested persons must not be returned there. I heard the applications on 14 December 2020.

The background

[2] The general factual background relating to the Polish judicial reforms is well known and set out extensively, up to October 2018, by the Divisional Court in the cases of *Pawel Lis, Dariusz Lange, Piotr Pawel Chmielewski* v *Regional Court in Warsaw*, Poland, Zielona Gora Circuit Court, Poland, Regional Court in Radom, Poland [2018] EWHC 2848 (Admin) [commonly referred to as L and L] at paras [6] to [25]. I do not repeat this in detail here, in fact, I truncate it, to say, briefly, that there have been a series of what, the present Polish Government considers to be reforms affecting, inter alia, the personnel comprising the judiciary, their appointment, dismissal and the forced retirement of certain judges. These changes have been questioned, as unconstitutional, contrary to the rule of law and an attack on the independence of the judiciary in Poland, by many international bodies, including the Venice Commission and the European Commission. The latter has engaged the formal dispute resolution mechanism, contained in Article 7(1) of the Treaty on European Union [TEU], [see the Reasoned Proposal in Accordance with Article 7(1) of the Treaty on European Union regarding the Rule of Law in Poland published by the European Commission on 20 December 2017]. Separately, the Irish High Court, using the fast-track PPU procedure, referred certain questions to the CJEU, relating to the impact, if any, of the present Polish Government's structural changes to its judiciary and legal system, on the operation of the EAW in Ireland, see, *Minister of Justice and Equality* v *Celmer* [2018] IEHC 119 which was ruled on by the CJEU, Grand Chamber, on 25 July 2018, reported sub nom LM [2019 1WLR 1004; C-216/18 PPU EU C: 2018: 586, (Judgment in Minister for Justice and Equality (Deficiencies in the system of justice)) [hereinafter referred to as the Irish reference]. In its ruling on the Irish reference, the Grand Chamber issued extensive guidance on the way in which EU law operates, within national law, when a requested

person asserts before an executing state that the rule of law has broken down or is materially defective, in the requesting state, by reason of significant structural changes to the judiciary made by the executive; and that the requested person will be deprived of his or her fundamental right to a fair trial by an independent and impartial tribunal in such a constitutionally restructured requesting state.

[3] Further, after October 2018, more changes were made by the Polish Government in relation to the appointment of judges, the jurisdiction of the courts and the disciplinary arrangements for the judiciary; the so-called 'muzzel-law' which resulted inter alia in the suspension of Judge Igor Tuleya in Warsaw, for what some say amounts to no more than him doing his job, which, in the eyes of many, has impacted adversely on the perception of the operation of the rule of law and judicial independence in Poland. These and like developments have resulted in a further preliminary reference from an EU court, this time from the Netherlands. At the date of publication of this Note, the CJEU has not made a ruling in respect of this reference. However, the Opinion of the Advocate General (Campos Sanchez-Bordona) in the conjoined cases of L and P (Intervener Openbaar Ministerie) C-354/20 PPU and C-412/20 PPU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands) [hereinafter referred to as the Dutch reference], was published on 12 November 2020. This reference concerns the operation of two EAWs between Poland and the Netherlands, in factual circumstances unspecified in the Advocate General's Opinion but described as 'worsening', from those narrated in the Irish reference. Again briefly, by way of further background detail, critics of the present Polish Government's reforms assert that between 2018 and 2020 the Polish Government has made a number of changes which, inter alia, reorganise the Polish courts, remove the jurisdiction of Polish judges with regard to motions which challenge the independence and impartiality of the courts; referring, it is

said, such questions, unconstitutionally, to a single chamber of the Supreme Court; and additionally introduced a suite of, what some contend, are controversial disciplinary measures in respect of judges. However, notwithstanding what is described as a "worsening situation", the answer which the Advocate General gives in his Opinion, in the Dutch reference, is the same, as he recommends the reaffirmation of the reasoning contained in the Grand Chamber ruling on the Irish reference, which he invites the CJEU to sustain and repeat. Thus, he concludes, even if there are generic structural changes to the judiciary in Poland which, ex facie, are said to undermine the rule of law there, these do not, in themselves, suspend the operation of the EAW in any particular case without further specific assessment of the facts, in any individual case, to ascertain whether it has been demonstrated that there are substantial grounds to believe that there is a real risk the requested person will be denied a fair trial by an independent and impartial tribunal, which legal guarantee underpins the operation of the EAW system. I may add, that the Divisional Court in L and L, in which Article 6 ECHR challenges were taken to the execution of Polish EAWs in England, also followed the approach of the Grand Chamber in the Irish reference. I will address that approach later in this Note.

The questions (as amended) to be referred

[4] The applications identify 6 questions which I am invited to refer to the CJEU. These are:

> "(1) In light of Article 19 of the Framework Decision 2002/584/JHA (as amended), Article 2 of the Treaty of European Union and Article 47 of the Charter of Fundamental Rights when the national law of the issuing member state has been amended after the EAW has been issued in such a way that the objective circumstances in which that requesting court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that

court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it and, thus, may lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law, is the executing court obliged to discharge the requested person because the requesting court is no longer a competent judicial authority?

(2) In light of the Framework Decision 2002/584/JHA (as amended), Article 2 of the Treaty of European Union and Article 47 of the Charter of Fundamental Rights when it has been established that there is a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of article 47 of the Charter of Fundamental Rights for any suspected person due to the structural and fundamental weaknesses of the courts of the requesting state, is the executing court obliged to discharge the requested person – regardless of the particular court of the requesting state which will have jurisdiction, the personal circumstances of the requested person, the nature of the offence with which she is charged and the factual context underlying the EAW?

(3) In light of the Framework Decision 2002/584/JHA (as amended), Article 2 of the Treaty of European Union and Article 47 of the Charter of Fundamental Rights when it has been established that domestic law in the requesting state has been amended so that the requesting court is prohibited from considering any motion alleging a lack of independence of a court or lack of impartiality of a judge does that amount to a real risk of breach of the fundamental right to a fair trial guaranteed by the second paragraph of article 47 of the Charter of Fundamental Rights for any suspected person and, is the executing court obliged to discharge the requested person – regardless of the particular court of the requesting state which will have jurisdiction, the personal circumstances of the requested person, the nature of the offence with which she is charged and the factual context underlying the EAW ?

(4) In light of Article 4 of the EU-UK Withdrawal Agreement, are courts in the United Kingdom required to give effect to the Charter of Fundamental Rights when determining questions that arise in respect of an EAW where the requested person was arrested before the transition period for the purposes of the execution of that warrant?

(5) If so, in light of the exit of the United Kingdom from the European Union on 31 January 2020 does the high level of trust between member states of the Union that is a principle of the EAW system now no longer apply in respect of an extradition request from a member of the Union to the United Kingdom ? As a consequence, does the reasoning of the CJEU in Criminal proceedings against LM, (Case C-216/18PPU) [The Irish reference] no longer apply? If LM no longer applies to such extradition requests what test should the courts of the United Kingdom apply when deciding whether surrender of a requested person would breach his or her right to a fair trial guaranteed by the second paragraph of article 47 of the Charter of Fundamental Rights?
(6) Does the decision of the United Kingdom legislature to exclude the Charter of Fundamental Rights from domestic law from exit day in section 5(4) of the European Union (Withdrawal) Act 2018 remove the rights of a requested person who is a citizen

> of the Union to rights within the Charter of Fundamental Rights that are protected within Article 4 of the EU-UK Withdrawal Agreement, does this amount to a breach of her right to free movement under the Citizen's Right Directive 2004/38/EC and are courts in the United Kingdom required to give effect to the Charter of Fundamental Rights when determining questions that arise in respect of an EAW in respect of citizens of the Union?"

[5] Mr Mackintosh, senior counsel for the first requested person indicated that questions 1, 2 and 3 were essentially the same as those made in the, as yet undecided, Dutch reference so they were not insisted upon. He conceded that question 6 was not an extradition question at all and abandoned that one. He insisted on questions 4 and 5. Ms Mitchell, senior counsel for the second requested person adopted the submissions of Mr Mackintosh regarding the questions to be referred. Mr Harvey for the third requested person said he was neutral in respect of questions 1, 2 and 3. He invited me to refer questions 4 and 5. He was silent on question 6.

Submissions

[6] Mr Mackintosh's submission in support of the proposed reference was complex and wide ranging. I doubt I can do justice to it in a brief Note. I will endeavour to do it no injustice. He suggested that the three cases I am dealing with are bound to end up in the appeal court in 2021. He asserted the United Kingdom left the European Union on exit day (31 January 2020). The exit of the United Kingdom from the European Union is regulated by the EU-UK Withdrawal Agreement (2019/C 384 I/01). The Withdrawal Agreement entered into force on 1 February 2020. The United Kingdom is currently in the Implementation Period (transition), which ends on 31 December 2020. Accordingly, there is a degree of urgency. Without this reference, the appeal court will be deprived of the views of the CJEU on a core aspect of the case for the applicants, who resist extradition to Poland, concerning

how their EU law rights under Article 47 of the CFR, are to be enforced and interpreted in light of the terms of the EU-UK Withdrawal Agreement and the European Union (Withdrawal) Act 2018, prior to exit and within the transition period, in UK national law. The requested persons and the appeal court will be deprived of such an authoritative ruling unless this application is granted and I make a reference now for a preliminary ruling because the last day for lodging a reference for a ruling in terms of the Withdrawal Agreement is 31 December 2020 [Article 86(2)]. He then referred me to Article 4 of the Withdrawal Agreement, which provides:

> "Article 4
> Methods and principles relating to the effect, the implementation and the application of this Agreement
>
> 1.The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States. Accordingly, legal or natural persons shall in particular be able to rely directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law.
>
> 2.The United Kingdom shall ensure compliance with paragraph 1, including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible domestic provisions, through domestic primary legislation.
>
> 3.The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law.
>
> 4.The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union handed down before the end of the transition period.
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> 5. In the interpretation and application of this Agreement, the United Kingdom's judicial and administrative authorities shall have due regard to relevant case law of the Court of Justice of the European Union handed down after the end of the transition period."

He then referred me to section 5(4) of The European Union (Withdrawal) Act 2018, which provides:

> "(4) The Charter of Fundamental Rights is not part of domestic law on or after exit day."

He reminded me that article 47 of the Charter of Fundamental Rights of the European Union 2012/C 326/02 provides as follows:

> "Article 47
> Right to an effective remedy and to a fair trial
>
> Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
>
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
>
> Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

Mr Mackintosh spent some time tracing the history of a right to a fair trial under Article 6 of the ECHR in extradition proceedings, which he contrasted with the right to a fair trial under Article 47 of the CFR. As I understand it the point of question 4 of the proposed reference, put shortly, is that it is asserted, by Mr Mackintosh, that the Article 47 right is an enhanced right because it is part of a plethora of rights contained within the CFR which sits within EU Law to protect the EU citizen. By the disapplication of the CFR from UK domestic law achieved by s5(4) of the European Union (Withdrawal) Act 2018, Mr Mackintosh asserted it is imperative a reference is made now so that the CJEU can give authoritative guidance on how EU law and Charter rights during the transition period, apply and are enforced under UK domestic law. He also asserted, that an Article 6 ECHR right to a fair trial is different and lesser than an Article 47 CFR right to a fair trial, by relying on certain observations of

Advocate General Sharpston in Curtea de Apel Constana (Romania) v Radu [2013] QB 1031, where the Advocate General in discussing the question of a right to a fair trial and what would constitute a breach of the legal guarantee to such a fundamental right, under EU law, stated that it was unnecessary for the breach to be –

> "…so fundamental as to amount to a complete denial or nullification of the right to a fair trial…. I suggest that the appropriate criterion should rather be that the deficiency or deficiencies in the trial process should be such as fundamentally to destroy its fairness."

He said in relation to Article 6 of the ECHR that a breach thereof has traditionally been described as a 'flagrant denial of justice' or some synonymous phrase in extradition law jurisprudence. The key point justifying the present reference of question 4 is articulated in the applicant's written submission thus:

> "[60] Firstly, the United Kingdom Parliament purports to disapply the CFR in the United Kingdom after Exit Day. It would therefore seem to be impossible for a Court in the United Kingdom to refuse to extradite a requested person on the grounds that the extradition would contravene their CFR rights, but it would be able to refuse to extradite a requested person on the grounds that the extradition would contravene their convention rights and in the context of fair trial issues, Article 6 ECHR provides less protection than Article 47 CFR. There (sic) question is whether section 5(4) of the 2018 Act amounts to a breach of the Withdrawal Agreement."

[7] With regard to question 5, I note, this is now framed in the contingent. Accordingly, should question 4 be unnecessary to refer then in my opinion question 5 becomes, self-evidently, nugatory and moot.

[8] With regard to the central point both Ms Mitchell and Mr Harvey adopted the submission of Mr Mackintosh and neither added anything of substance in their limited address.

[9] Senior counsel, for the Lord Advocate, Mr Richardson, argued that the reference was unnecessary and that Mr Mackintosh's submission, in so far as it sought to refer for a ruling, the question of how EU law deals with the UK's disapplication of the CFR in deciding cases

during the transition period, was not a matter of EU law but UK national law and answered by section 5(5) of the 2018 Act, which provides a saving provision, in the following terms:

> "(5) Subsection (4) does not affect the retention in domestic law on or after exit day in accordance with this Act of any fundamental rights or principles which exist irrespective of the Charter (and references to the Charter in any case law are, so far as necessary for this purpose, to be read as if they were references to any corresponding retained fundamental rights or principles)."

That he said was a complete answer and if correct, in law, rendered the reference otiose.

Discussion and decision

[10] I listened carefully to the arguments put forward in favour of this application. I am, however, unconvinced it is necessary for a number of reasons. These are as follows:

1. The application fails the necessity test which it must pass before a reference can be made:
'70. In that regard, it should be borne in mind that the justification for a reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (Wightman v Secretary of State for Exiting the European Union (C-621/18) EU:C:2018:999; [2019] 1 C.M.L.R. 29 at [28] and the case law cited).' See A.K. and others v Sąd Najwyższy (Case C-585/18) [2020] 2 C.M.L.R. 10 at 69 and 70.
Section 5(5) of the 2018 Act is a complete answer to the pseudo problem posed. All the applicants' fundamental rights to a fair trial under Article 6 of the ECHR or Article 47 of the CFR are preserved and available to resist the EAW by virtue of the provision contained in s5(5).

2. The rationale for the reference is that the appeal court in 2021 may have the benefit of a ruling from the CJEU. That is a spurious reason. The appeal court can make its own references. If it is too late, that is too bad. The fact that legal aid was not applied for or made available to enable an earlier disposal of this case, is irrelevant.

3. There is nothing to refer as no facts concerning what will happen to any of the requested persons should they be extradited have been established. That is fatal to the reference and renders it nothing more than an academic exercise, much like, in my opinion, the present Dutch reference.

4. The issue sought to be brought before the CJEU relates in part to a suggestion that Article 6 ECHR rights are lesser rights than article 47 CFR rights, in so far as they relate to the fair trial guarantee before an impartial and independent tribunal. That suggestion is also spurious. There is no substantial difference between a fair trial

under Article 6 of the ECHR and Article 47 CFR. The same suggestion was rejected by the Divisional Court in L and L, which I regard as a highly persuasive authority and had there been anything in it one would have, as the Divisional Court noted, expected this to have been mentioned in the Irish reference and other parts of the EU law acquis. In my opinion the language of Advocate General Sharpston in Radu was merely adjectival. There was, and is, no need to re-invent the wheel. There is no substantial difference between the rights fundamentally guaranteed in each of the international instruments:

> 'To the extent that Advocate General Sharpston in Radu was suggesting that the EU and ECHR standards should be different, there is no support for the proposition in any of the jurisprudence of her court. In any event her suggested reformulation represents a distinction without a difference' L and L para 49.'

I agree with that statement and do not intend to waste the time of the CJEU considering it further. Also, as is well recognised the CFR, with regard to Justice, did not create new rights it merely codified within the Charter such fundamental rights as exist already within the acquis of the EU and gave them heightened visibility within the fundamental human rights landscape of EU law.

5. I do not consider, it is for the courts of one state of the EU to exclude the courts of another state from the operation of the EAW system given the high level of mutual trust between states, which forms the basis for Council Framework Decision 2002/584/JHA as amended by Council Framework Decision 2009/299, absent compelling and specific particular circumstances, justifying a refusal to surrender a requested person on breach of Article 6 ECHR or Article 47 CFR grounds, which is a matter for proof, not preliminary reference. The Irish reference already authoritatively sets out a road map for European judges to follow to deal with contested Polish cases under the EAW, in circumstances such as the present. In my opinion, the Irish reference is binding on me. In L and L, the English judges agreed with it indicating that they themselves, would independently, have reached the same conclusion. The Advocate General in the Dutch reference has repeated the same test to be applied in these cases. I do not, in this short Note, set out his reasoning, which closely mirrors the logical analysis of the Advocate General (Tanchev), in the Irish reference and fully addressed the fact that the ongoing dispute resolution mechanism, anent the rule of law, between the EU Commission and Poland before the Council of the EU under Article 7(2) TEU, continues at member state level. His conclusion reaffirmed the bipartite test which must be applied if, exceptionally, a court of the EU considers a fair trial cannot be guaranteed in the courts of another member state, which was the approach taken in L and L. He said:

> 'V. Conclusion
>
> 92. In the light of the foregoing considerations, I propose that the Court of Justice reply as follows to the rechtbank Amsterdam (District Court, Amsterdam, Netherlands): Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by

> Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that:
> In the absence of a formal determination by the European Council, under Article 7(2) TEU, of a serious and persistent breach by the issuing Member State of the values referred to in Article 2 TEU, the executing Member State may refuse to execute a European arrest warrant only after establishing specifically and precisely that, having regard to the requested person's situation, the nature of the offence for which he is being prosecuted and the factual context that forms the basis of the European arrest warrant, there are substantial grounds for believing that that person will, if surrendered, run a real risk that his fundamental right to a fair trial, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, will be breached'"

Accordingly, for the foregoing reasons I see no need to refer the proposed questions to the CJEU for a ruling.

Further procedure

[11] In the case of Magdalena Zagajewska, she is the subject of an EAW issued by the Circuit Court in Swidnica, Poland on 8 February 2019 in respect of one accusation matter comprising seven charges of fraud. The offences are said to have taken place between 1 October 2005 and 8 November 2005. She resists extradition on the basis of the passage of time, Article 6 and Article 8 of the ECHR. No proof hearing has been assigned.

[12] In the case of Natalie Orzenchowska, proof before me has been part heard. It was interrupted because she too has taken this Article 6 ECHR point in opposition to the charges she faces. She is wanted by the Regional Court in Krakow, in respect of accusations of fraud and forgery allegedly committed in June 2015. I have heard evidence in respect of her Article 8 ECHR claim only.

[13] In the case of Robert Mydlowski, he is wanted by the District Court in Wroclaw-Fabryczna on a EAW issued on 7 September 2016, having been convicted and sentenced to

imprisonment in absentia on 26 September 2011, for offences of fraud and swindling. No proof hearing has been assigned.

[14] During the course of the debate Mr Mackintosh QC indicated that should there be no reference and the issue go to proof, he had just received a copy of an untranslated report from a Polish expert whom, he anticipated, may be required at proof. Mr Richardson QC, during the debate, acknowledged (but did not concede) that the first generic part of the test in the Irish reference may be satisfied in any of the 60 or so Polish cases before the court, but in each of the three cases which called before me for debate, he observed, there is no suggestion in the case and answers lodged by the requested persons that some particular speciality exists in their case which suggests that substantial grounds exist to believe a real risk exists that the requested person cannot receive a fair trial from the requesting court in Poland following the present Polish Government's systemic reforms to the judiciary there. I therefore emphasise now that the second part of the test requires the requested person to demonstrate substantial grounds exist that a real risk exists in their own case that they will be deprived of their legal guarantee to a fair trial before an impartial and independent tribunal, if returned to Poland. Accordingly, I for my part will require to hear very little expert testimony on the first part of the test. There is already sufficient information contained in the public domain documents and the case law to address that issue. However, particular focus will require to be had by parties, to the second part of the test in the case of each requested person whose case comes before me for consideration.

[15] Both senior counsel also told me that they had exchanged views and correspondence about any specific questions to be asked of the Polish authorities, including particular assurances sought about a fair trial guarantee in the case of Magdalena Zagajewska. If there is any speciality in her case of a political nature or for any other reason, which gives rise to

the suggestion that she cannot now be guaranteed a fair trial in Poland, I expect assurances to be sought by the Lord Advocate, to address this matter in her case and also in the two other cases in this application, if there are substantial grounds to believe such concerns legitimately exist. Importantly, I note from the Dutch reference that the Supreme Court in Poland, when asked, failed to answer requests for information from the Dutch court. I say no more about that or the reasons which may exist in Polish national law now for that and only observe that I would expect the requesting judicial authorities in Poland to be clearly informed of the possible inferences to be drawn from a refusal to provide further information legitimately requested in terms of Article 15 of Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (2002/584/JHA) as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.

[16] There are three Devolution Issue Minutes lodged with these applications for a preliminary reference. These were not argued in substance but to the extent that they are insisted upon, I refuse them for the reasons stated above that in seeking execution of the EAWs in each case the Lord Advocate is not, in my opinion, acting in a way incompatible with the convention rights of the requested persons.

[17] I will adjourn these applications to my Extradition Court of 28 January 2021 when I shall allocate full hearings for Magdalena Zagajewska and Robert Mydlowski. I shall fix a continued hearing date in the case of Natalie Orzenchowska, to hear any evidence and submissions she cares to make in relation to her Article 6 challenge.

[18] I anticipate the CJEU ruling in the Dutch reference will be issued by that date.