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Case No: CO/778/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/10/2019

Before :

MR JUSTICE JULIAN KNOWLES

Between :

JACEK LITWINCZUK
- and -
THE CIRCUIT COURT IN
SZCZECIN, POLAND

Appellant

Respondent

David Williams (instructed by **Kaim Todner**) for the **Appellant**
Tom Hoskins (instructed by **CPS**) for the **Respondent**

Hearing dates: 3 October 2019

Judgment Approved by the court
for handing down
(subject to editorial corrections)

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The Honourable Mr Justice Julian Knowles:

Introduction

1. This is an appeal by the Appellant, Jacek Litwinczuk, against the order for his extradition to Poland made pursuant to s 21A(5) of Extradition Act 2003 (EA 2003) by Deputy Senior District Judge Ikram on 20 January 2019.
2. The European arrest warrant (EAW) is an accusation warrant. It was issued on 26 February 2018. The offence described is an attempt to defraud Sebastian Jarzab of 53,220 zlotys by sending false emails.
3. Extradition was resisted below on a number of grounds, but only two are now relevant:
 - a. Firstly, the Appellant appeals with the permission of Sir Wyn Williams sitting as a High Court judge against the judge's decision that his extradition is not barred under s 12A (absence of decision to charge and try).
 - b. Second, he renews his application for permission to appeal against the judge's decision that extradition is not barred under s 21A of the EA 2003 read with Article 6. It is said that there is a risk of political interference with the judiciary at the court which will try the Appellant if he is extradited: cf *Lis v Regional Court in Warsaw* [2018] EWHC 2848 (Admin).
4. Before considering the parties' rival submissions it is convenient first to set out the statutory framework.

The legal framework

Section 12A

5. Section 12A of the EA 2003 is entitled 'Absence of prosecution decision' and provides:

“(1) A person's extradition to a category 1 territory is barred by reason of absence of prosecution decision if (and only if)—

(a) it appears to the appropriate judge that there are reasonable grounds for believing that—

(i) the competent authorities in the category 1 territory have not made a decision to charge or have not made a decision to try (or have made neither of those decisions), and

(ii) the person's absence from the category 1 territory is not the sole reason for that failure,

and

(b) those representing the category 1 territory do not prove that -

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

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

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

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

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

6. This section is not wholly straightforward. It has been considered in a number of cases including, most extensively, in *Kandola v Generalstaatswaltschaft Frankfurt, Germany* [2015] 1 WLR 5097, *Puceviciene v Lithuanian Judicial Authority* [2016] 1 WLR 4937, and *Docì v The Court of Brescia, Italy* [2016] EWHC 2100 (Admin). The case law can be summarised as follows:

- a. In *Carpenter v Pre-Trial Investigation Court Milan, Italy* [2019] EWHC 211 (Admin), [1, 8] the Divisional Court (Hickinbottom LJ and Popplewell J) said that s 12A is concerned with the necessity for requesting judicial authorities from Category 1 territory EU member states to have made sufficient progress in prosecution of an ‘accused’ person before that person may be extradited under an EAW; its purpose is to ensure that individuals are tried expeditiously following their surrender.
- b. The application of s 12A involves two distinct stages. At the first stage, which involves both subsection 1(a)(i) and (ii), the judge is concerned with whether there are reasonable grounds for believing that one or both of the two decisions, the decision to charge or the decision to try, has not been taken, and if so whether the person's absence from the foreign territory is not the sole reason for that failure. If there are such reasonable grounds for belief and the decision not to charge or try has not been made for the sole reason that the requested party is absent from the territory concerned, the judge must move to the second stage required by subsection 1(b). It is then for the issuing judicial authority to prove to the criminal standard that a decision has been made to charge and to try, or if not that the sole reason why not is the requested person's absence from the relevant territory: see *Kandola*, supra, [28] and [29].
- c. At the first stage the default position is that the two decisions have been taken. It is only if the defendant raises a challenge that there has been no relevant decision that the question arises, and it must be based on something more than mere assertion. It does not involve proof on a balance of probabilities but cannot be based on simple assertion or a fanciful view or ‘feeling’: *Ibid*, [30].
- d. If it is appropriate to embark upon the first stage, it may be clear from the warrant itself, read as a whole, that the appropriate authorities have taken or have not taken

the two decisions. If the matter is clear from the terms of the warrant as a whole that the decisions have been taken, the district judge should look no further in relation to that point ([31]). That guidance was reiterated in *Puceviciene*, supra, [51].

- e. However, if a defendant makes a challenge under s 12A and it is unclear from the warrant itself whether decisions have been taken to charge and try, the district judge is entitled to consider extraneous evidence. It is up to the requested person to advance sufficiently cogent evidence to raise a case to the standard indicated above. However, evidence should not be permitted to throw doubt on a clear statement in the warrant that the two decisions have, in fact, been made. Furthermore, elaborate expert evidence on what, under the relevant domestic law, might constitute a ‘decision to charge’ or a ‘decision to try’ is not to be encouraged. At the first stage (ie, the ‘reasonable grounds’ stage), it is neither appropriate nor necessary for the district judge to make or direct inquiries of the judicial authority as to whether decisions to charge or try the requested person have been made. That is because it is for the requested person to satisfy the district judge that there are ‘reasonable grounds for believing’ that at least one of the two decisions *has not* been made. Likewise, it is not appropriate or necessary for the district judge at the ‘reasonable grounds for believing’ stage to cause any inquiry to be made of the judicial authority as to the reason for the absence of either such decision. That is because, at this first stage, it is also for the requested person to show that there are reasonable grounds for believing that the failure to take whichever decision is missing is not solely due to the requested person's absence from the category 1 territory: *Kandola*, supra, [32].
7. Further helpful guidance on the application of s 12A is to be found in the judgment of Hamblen LJ in *Fox v Public Prosecutor's Office of Frankfurt am Main, Germany* [2017] EWHC 3396 (Admin), [12]-[17].

“12. The purpose for which section 12A was introduced was addressed by the Divisional Court in the leading case of *Puceviciene v Lithuanian Judicial Authority* [2016] EWHC 1862, [2016] 1 WLR 4937 in the judgment of Lord Thomas CJ at [73]:

‘73. ... The mischief at which the section is directed is the possibility of a person being surrendered and then languishing in custody whilst the alleged crime continued to be the subject of lengthy investigation without decision to charge and try having been made. It was not designed to enable a requested person to remain in the United Kingdom for as long as possible by forcing the requesting judicial authority to carry out part of its processes in this jurisdiction. The application of the provisions of section 12A secures that the requesting judicial authority will be in a position to get on immediately with the next step in its prosecution process as soon as the requested person is surrendered. The purpose

of section 12A is served by confining it to the issues it actually raises.’

13. The general approach to the interpretation of section 12A was considered in *Puceviciene* at [11] by reference to the decision of the Divisional Court in *Kandola v Generalstaatsanwaltschaft Frankfurt, Germany, Droma v State Prosecutor Nurnberg-Furth, Bavaria, Germany* [2015] EWHC 619 (Admin), [2015] 1 WLR 5097, it being stated as follows:

‘11. The background to section 12A is helpfully set out in paras 17–25. The Explanatory Memorandum to the Act which inserted section 12A is quoted to show that the concepts of "decision to charge" and "decision to try" in section 12A need a "cosmopolitan" interpretation, that is to say one which accommodates and reflects the criminal procedures of other countries, rather than those in the UK. Such an interpretation would avoid emplacing significant but unintended barriers to extradition on a speedy basis, while still respecting the purpose of section 12A, to

‘ensure that a case is sufficiently advanced in the issuing state (that is, there is a clear intention to bring the person to trial) before extradition can occur, so that people do not spend potentially long periods in pre-trials detention following their extradition, whilst the issuing state continues to investigate the case.’

14. In *Kandola* the general approach and the importance of a "cosmopolitan" approach to interpretation was explained by Aikens LJ as follows at [26]-[27]:

‘26. There is a trans-national interest in bringing those accused of serious crime to justice, as Lord Steyn noted in *In re Ismail* [1999] 1 AC 320, 327. He considered that extradition treaties and extradition statutes should therefore be accorded "a broad and generous construction so far as the texts permit it in order to facilitate extradition". That point was noted by Lord Hope of Craighead in the *Cando Armas* case [2006] 2 AC 1, para 24, which concerned the construction of the 2003 Act itself. Lord Hope also pointed out that individual liberty was also at stake, so that "generosity must be

balanced against the rights of the persons who are sought to be removed under these procedures...

27. It seems to us that these are factors to be borne in mind in construing section 12A. It was clearly inserted in Part 1 with the aim of ensuring that those extradited under "accusation" EAWs should not be subject thereafter to long periods in detention whilst investigations were carried out in the issuing state. At the same time, we must not approach the construction of the phrases "decision to charge" and "decision to try" in section 12A by reference solely to the domestic law and practice of criminal procedures in England and Wales or even the UK as a whole. Instead we must construe it in a "cosmopolitan" way...'

15. In determining whether a decision to charge and a decision to try has been made the Court in *Puceviciene* said that regard should be had to the following matters at [50]:

‘(i) The background to the insertion of the provision into the Act as summarised in *Kandola's case* [2015] 1 WLR 5097: see para 11 above.

(ii) The use of the terms "decision to charge" and "decision to try" plainly does not imply that the case must be trial ready. (a) We have referred at para 40, by way of example, to the position in England and Wales, where a decision to charge and the decision to try (by, for example, the fixing of a trial date within a few days of an arrest in an indictable only case) can be taken at a very early stage of the proceedings whilst the investigation is still underway and it is known that the trial might be at some considerable time away. This is common in complex cases where the court needs to set a timetable to trial. (b) It is necessary to respect, under the principle of mutual confidence which underpins the Framework Decision, the responsibilities of the judiciaries in member states of the EU to bring cases as expeditiously as possible to trial after the decision to charge and try has been made. It is not for the courts of England and Wales to supervise under the guise of section 12A the way in which such courts progress the cases before them.

(iii) The term used in the section is "a decision to charge", not "charged". This plainly implies that the

focus should be on the word "decision", not any formal step.

(iv) It is often the case that in England and Wales a decision is made to charge a person and to try that person at a very early stage, where that person is a terrorist, leader of a gang or a danger to the public. It is therefore necessary to approach the meaning of section 12A on the basis that Parliament must have had this factor in mind and been appreciative of the fact that the consequences of finding that there has been no decision to charge and no decision to try in the member state where the crime was committed will be that the persons detained or on bail under an EAW must be discharged.

(v) The majority of persons detained or on bail subject to the EAW are sought (as these appeals all illustrate) by the prosecuting authorities or courts of their own nation state. It cannot have been intended by Parliament to make it easier for such persons to continue to reside in the UK or to make the task of progressing a prosecution more difficult.

(vi) It is also important to emphasise that the real focus of section 12A is always on whether there has been a decision to try. If there has been no decision to try, the question of whether there has been a decision to charge is irrelevant. If there has been a decision to try, a decision to charge will inevitably have been taken either earlier or at the same time as the decision to try. The words "decision to charge" in reality add nothing to the achievement of the purpose, actual or supposed, of the Act or to its effect. They add nothing at either the "reasonable grounds" stage or at the second stage where the burden lies on those representing the competent authority of the requesting state to prove that the decisions have been taken.'

16. In relation to the meaning of a decision to charge and a decision to try the Court gave the following guidance at [55]-[56]:

‘55. In our view, a decision to charge is the decision which is made when there is sufficient evidence under the relevant procedural system to make an allegation that the defendant has committed the crime alleged. As the decision can be conditional upon hearing what the defendant has to say, such a

decision can have been made even if it is necessary to put the allegation to the defendant and hear what he has to say before confirming the decision and proceeding to make the charge.

56. A decision to try is simply a decision where the relevant decision-maker (who may be a police authority, prosecutor or judge under the relevant procedural system) has decided to go ahead with the process of taking to trial the defendant against whom the allegation is made. In some systems, it may be the case that the decision to make the allegation that the person has committed a criminal offence will also be a decision that the matter will proceed to trial, subject to hearing what the defendant has to say or to subsequent review. In England and Wales, the decision to charge will almost always be the decision to try. In other systems it may not be and a separate decision to try has to be made, even though that decision may be conditional or contingent upon other matters. Again, for the reasons we have given, a decision is a decision even if informal.'

17. With regard to the formality and conditionality of such decisions the Court observed as follows at [54]:

'54.We see no reason why any formality is required in relation to the making of a decision, as a prosecutor is entitled to make a decision to try a defendant before implementing any formal steps necessary, unless the procedural law of the requesting state prevents informality. Furthermore, in our view, a decision to try is none the less a decision to try even if it is conditional or subject to review. We find the judgment of the Irish Supreme Court in *Olsson's* case [2011] 1 IR 384 very persuasive in these respects, as we have stated at para 45 above. There will, for example, be a decision to try, even if it is taken subject to the completion, after extradition, of formal stages, such as an interview and subject to those stages not causing a reversal of the decision already made even informally, to charge and try.'

Article 6

8. Section 21A bars extradition where it would violate the defendant's Convention rights. Extradition will violate Article 6 where there is a real risk defendant will be extradited to a trial which will amount to a 'flagrant denial of justice': *R(Ullah) v Special*

Adjudicator [2004] 2 AC 323, [24]; *Drozd and Janousek v France* (1992) 14 EHRR 745, [1110]; *Soering v United Kingdom* (1989) 11 EHRR 439, [113].

9. In *Lis and others v Regional Court in Warsaw, Poland* [2018] EWHC 2848 (Admin), handed down on 31 October 2018, the Divisional Court dealt with generic matters advanced on behalf of the appellants in respect of the judiciary and judicial system in Poland which were said to show that there was, as a result of political changes in Poland, a lack of judicial independence such that there was a real risk of a fundamental or flagrant breach of the right to a fair trial. It was further argued that the lack of independence of the Polish judiciary means that courts and tribunals in Poland no longer constitute judicial authorities within the meaning of section 2 of the 2003 Act.

10. The Court rejected these general submissions but noted at [71] that there was:

“As matters stand at present, in our judgment there exists no general basis to decline extradition to Poland. However, by reason of the matters contained in the Commission’s Reasoned Proposal and in the other material to which we have referred, there is sufficient concern about the independence of the Polish judiciary to mean that these Appellants and others in a similar position should have the opportunity to advance reasons why they might be exceptional cases, requiring individual “specific and precise assessment”, to see whether there are substantial grounds for believing they individually might run a real risk of a breach of their fundamental rights to a fair trial. . We make it clear, following the approach of the Grand Chamber of the Luxembourg Court, that exceptional circumstances must be demonstrated. We indicate, on the basis of the limited material available to us, that these cases would appear unlikely to fulfil that test and that those sought to be extradited for ordinary criminal offences, with no political or other sensitive content, would seem unlikely to be able to establish the necessary risk.”

11. A subsequent attempt by Mr Lis and another appellant to show that, despite them only being accused of ‘ordinary’ crimes, the requisite risk was established, failed in *Lis and others v Regional Court in Warsaw, Poland (No 2)* [2019] EWHC 674 (Admin).

The appeal on s 12A

The evidence

12. The EAW states at the beginning that the judge issuing it was requesting that ‘the person mentioned below be arrested and surrendered for the purpose of conducting a criminal prosecution’. In box F it is stated that ‘The time limit for the prosecution for the offence he is charged with expires on 22 June 2037’.

13. However, in Further Information dated 21 November 2018, the Circuit Public Prosecutor's Office in Szczecin stated in response to an enquiry from the CPS (emphasis added):

“At the moment the matter is still at the stage of preparatory proceedings and is conducted by the prosecution authorities. Requested Jacek Maciej Liwinczuk *has not been charged before the Court yet*. The District Court in Stargard, 7th Branch Penal Division in Pyrzyce, applied on 24th October 2013 for a preventative measure in the form of remand in custody for a period of 14 days from the day of arrest, and then on 5th December 2013, a Public Prosecutor of the District Prosecutor's Office in Pyrzyce issued a wanted notice for the mentioned person.”

The decision below

14. The judge set out the evidence that I have referred to and then said that he found that:

‘... the EAW is quite clear on the face of it that a decision to charge and try has been made.

I take the view that, where it is clear, it is the EAW that I consider to resolve any issue under s 12A. In any event, I do not accept the argument that the further information throws doubt on an otherwise crystal clear warrant. The additional information merely suggests he has not been before the court yet and is still in the hands of the prosecutor. That is inevitable, as the RP has not been in Poland and ‘probably in the UK during the investigation’. This not does not (*sic*) at all undermine the EAW which states that the decision to charge and try has been made.

I am satisfied that the relevant decisions have been made and reject the argument made under s 12A.”

15. Hence, the judge concluded in relation to the first stage of s 12A (see above) that there were no reasonable grounds for believing that one or both of the two decisions, the decision to charge or the decision to try, has not been taken. He found that they had. His principal approach was simply to look at the EAW itself without the Further Information, on the basis of which he was satisfied that both decisions under s 12A had been taken. In the alternative, he held that the Further Information did not throw doubt on the warrant.

Submissions

16. On behalf of the Appellant, Mr Williams submitted that the Further Information provided the necessary reasonable grounds for believing that the decision to charge and the decision to try had not been taken because it states in terms that the Appellant has not yet been ‘charged before a court’. He said that the first stage of the s 12A enquiry was made out and that the judge should therefore have moved to the second stage and required the Respondent to prove to the criminal standard that both decisions had been

taken, or if that one or both had them had not been taken, that the Appellant's absence from Poland was the sole reason for that failure.

17. Mr Williams did not submit that I should allow the appeal and discharge the Appellant, but said that I should adjourn the appeal and direct that further questions be put to the Respondent in line with the second stage.
18. On behalf of the Respondent, Mr Hoskins submitted that the judge was correct in his reasoning and conclusions. He relied on the wording in the EAW itself as being clear and unequivocal and said they should be afforded a high degree of mutual trust and confidence. He said the judge was right to 'look no further' than the EAW: *Kandola*, supra, [31]. He submitted that the Further Information did not bear the weight which the Appellant placed upon it. He pointed out that the statement about the Appellant not having been charged came in response to a question from the CPS about the passage of time and not about the charge/try decision-making issue.

Discussion

19. In my judgment the district judge was plainly wrong in his principal approach, namely, solely to look at the EAW and to regard it as 'crystal clear' and to ignore the Further Information. As I shall explain, the Further Information is to be regarded as incorporated into, in other words, part and parcel of, the EAW. The Further Information obviously raises an issue whether the Appellant has been charged. The primary error the judge made was to regard the EAW as being somehow separate and distinct from the Further Information which the Public Prosecutor had supplied. It is clear from recent case law that further information from the authorities in the requesting state is to be treated as if it were incorporated into, and thus part of, the EAW. As such, the district judge was bound to have regard to it. In any event, the EAW itself was not crystal clear.
20. In *Alexander v Public Prosecutor's Office, Marseilles District Court of First Instance* [2018] QB 408 the Court considered the decisions of the CJEU and the Supreme Court respectively in *Criminal proceedings against Bob-Dogi* (Case C-241/15) [2016] 1 WLR 4583, CJEU, and *Goluchowski v District Court in Elblag, Poland* [2016] 1 WLR 2665. The issue was namely whether and to what extent further information from an issuing judicial authority can validate or cure a defect in an accusation EAW by supplying further information where the EAW in question is said to lack some of the particulars required by s 2 of the EA 2003.
21. The orthodox approach was that an EAW stood or fell according to its terms and that further information could not be deployed to fill *lacunae* in it. That approach was explained by Lord Hope in *Office of King's Prosecutor v Cando Armas* [2006] 2 AC 1, [28], and in *Dabas v High Court of Justice in Madrid, Spain* [2007] 2 AC 471, [49]-[50]. In the latter case he said:

“49. I would add two further observations in response to this question. First, a judge conducting an extradition hearing under section 10 of the 2003 Act may find that the information presented to him is insufficient to enable him to decide whether or not the offence specified in the Part 1 warrant is an extradition offence within the meaning of section 64(2) or section 64(3). If so, he will be at liberty to request further

information from the appropriate authority of the category 1 territory, and to adjourn the hearing to enable it to be obtained. He has not been given power to do this expressly by the statute. But articles 10.5 and 15.2 of the Framework Decision show that it is within the spirit of this measure that the judge should be assumed to have this power. The principle of judicial co-operation on which it is based encourages this approach.

50. I wish to stress, however, that the judge must first be satisfied that the warrant with which he is dealing is a Part 1 warrant within the meaning of section 2(2). A warrant which does not contain the statements referred to in that subsection cannot be eked out by extraneous information. The requirements of section 2(2) are mandatory. If they are not met, the warrant is not a Part 1 warrant and the remaining provisions of that Part of the Act will not apply to it.”

22. In *Alexander*, supra, at [73] the Court concluded that the effect of *Bob-Dogi*, supra, and *Golochowski*, supra, was that the previous approach to the requirements of an EAW and the role of further information had to be taken no longer to apply. It said the formality of Lord Hope’s approach in *Dabas*, supra, based on the wording of the EA 2003, had not survived. As a consequences of these later decisions it is open to a requesting judicial authority to add missing information in further information to a deficient EAW so as to establish the validity of the warrant as a Part 1 warrant for the purposes of the EA 2003.
23. The effect of these decisions is that further information is to be treated as if it were part of – in other words, incorporated into – the EAW (save where the EAW is so deficient as to be a nullity: see *Alexander*, supra, [75]). Such extreme cases aside, the EAW and the further information are not to be treated as separate and distinct documents but as part and parcel of the same document. It follows that the reference in *Kandola*, supra, [30], to the need for the judge to read the warrant ‘as a whole’ means reading the EAW itself and any further information from the issuing judicial authority, or public prosecutor (if different). Such further information is not the sort of extrinsic or extraneous evidence referred to in *Kandola*, supra. It is plain that what there was being warned against was *the defendant* being permitted to introduce such evidence where the EAW was clear in order to try and throw doubt upon it.
24. This analysis is entirely consistent with what was said in *Cimieri v Court of Agrigento*, Italy [2018] 1 WLR 2833. In that case the issuing judicial authority - represented by exceptionally experienced extradition counsel – conceded that evidence contained within further information supplied by a judicial authority for the purpose of extradition proceedings pursuant to a request by the court or by the CPS was in principle admissible. The Court accepted the correctness of this concession and said at [25] that the true position is that evidence emanating from the judicial authority, ie, issued by the authority, is capable of being admissible in extradition proceedings even if its alleged effect is to undermine clear statements in an EAW to the effect that decisions to charge and try have been made.

25. The principal approach of the district judge in the present case – namely simply to look at the EAW itself without the Further Information - was therefore wrong and contrary to settled principles.
26. The result when the EAW is considered as a whole – which means looking both at the EAW itself and the Further Information – is that there are obviously reasonable grounds for believing that the competent authorities in Poland have not made a decision to charge the Appellant or to try him. That is because there is a clear statement that the Appellant has not been ‘charged before the Court yet’. True it is that the EAW taken alone has a statement that he has been charged, but on their face these statements are hard to reconcile absent some further explanation. And if no decision has yet been taken to charge the Appellant it is most unlikely that there has been a decision to try him. With respect to the judge, it was not open to him to speculate that all that was meant in the Further Information is that the Appellant had not been before a court. That may or may be true, but an explanation is called for, and he should have called for one.
27. I do not accept that the mere fact that the EAW says the Appellant is wanted for a ‘criminal prosecution’ is sufficient to resolve these ambiguities, or to provide evidence from which it can be concluded that a decision to try the Appellant has been taken.

Conclusion

28. The result is that the district judge should have embarked on the second stage of the s 12A enquiry. Section 27 of the EA 2003 does not empower me to remit the matter to the judge: I can only allow or dismiss the appeal. However, it is open to me to adjourn the appeal and to call for further information in order to determine whether, despite his incorrect approach, the district judge’s overall s 12A decision was right or wrong: *FK v Stuttgart State Prosecutor’s Office, Germany* [2017] EWHC 2160 (Admin), [43].
29. I therefore invite counsel to jointly draw up a list of questions to be submitted to the issuing judicial authority in line with s 12A(1)(b). Once I have approved these, the CPS must transmit them forthwith. The Respondent must reply within 14 days of the date of transmission. Upon receipt of replies from the issuing judicial authority the parties must indicate within seven days whether (a) the appeal is withdrawn; (b) the appeal is conceded; or (c) whether a further oral hearing is required. I will then give appropriate directions if necessary.

Application for permission to appeal

The evidence

30. The evidence relied on by the Appellant below included:
 - a. A press release from the European Court of Justice dated 19 October 2018 indicating that the Court, acting at the request of the European Commission, granted an interim injunction preventing Poland from applying the provisions of the new Polish law on the Supreme Court (‘The Supreme Court Law’). This law decreased the mandatory retirement age to sixty-five years old, unless the President of Poland granted discretionary relief (with no provision to review this

discretionary executive decision) and, additionally, increased the number of Supreme Court Judges;

- b. A translated version of the Resolutions of the General Meeting of the Regional Judges Representatives of the Szczecin Regional Court of 27 September 2018, which bemoaned (i) the Supreme Court Law; (ii) opposed the statements of politicians ‘defaming’ judges; (iii) at resolution 3, ‘considered unacceptable... all of the actions which, even indirectly, could influence the content of the court’s rulings.... Examples of such proceedings are the ones relating to the alleged inadequacies in appointing the adjudicating panel in relation to the pre-trial detention in the ‘Police Case’ [Police is a town in Poland]. We would like to indicate that the investigation of this matter in the form of the supervision by the Ministry of justice did not show any shortcomings in Szczecin courts’ activities’; (iii) the use of judicial disciplinary proceedings to target two judges, including one from Szczecin, Judge Arkadiusz Krupa and request documents unrelated to the investigation;
- c. An expert report of Mr Kruger, a Polish Advokat dated 2 January 2019, which indicated that:
 - (i) ‘Although the Court that had issued Mr Litwinczuk[‘s] EAW is legally independent, there had been more and more political pressure on judiciary in Poland recently. The most flagrant cases of executive interference with judiciary concerns high profile criminal cases of political nature’ (at [11]);
 - (ii) ‘Although there is no direct evidence of political pressure and dependence of the judges from the executive, indirect dependence may be the case’ (at [13]);
 - (iii) Ministers had made ‘strong and inappropriate comments’ about the Police Case (at p5);
 - (iv) ‘Although there was no direct trace evidence of intimidation of judges, in particular the EAW issuing judge or the trial judge, the general situation in Szczecin courts, expressed in judge’s resolutions, and aforementioned surveys, may suggest there is indirect intimidation of the judiciary in Szczecin, that may, potentially influence the fa[i]r trial of [the Appellant]’;
 - (v) At its height, there is no direct pressure on the court to appoint panels more sympathetic to the Ministry of Justice or the public prosecutor, but there was a potential threat of promotion of judges being compromised as these decisions are in the hands of the Ministry of Justice, however, ‘It is impossible though to draw decisive conclusion that promotions or demotions had been directly related to prior judicial decisions.’ (at p6).
- d. An additional expert from Katarzyna Dabrowska, a Polish Advokat which gives further information in relation to the ‘Police Case’ and concludes ‘combination of changes which was presented above as well as the Police case show that the possibility of political pressure on courts is possible’.

The judgment below

31. The judge rejected the Appellant's Article 6 argument on the grounds it was not an exceptional case as envisaged in *Lis (No 1)*, supra, [71] and that the Appellant was charged with an ordinary crime.

Discussion

32. I agree with the district judge's conclusions. The application for permission is not arguable. The evidence relied on by the Appellant is far too vague and far too general to come close to establishing a real risk of a flagrant denial of justice. His is an ordinary case of alleged fraud and there are no grounds to believe that it would be of the remotest interest to the Polish Executive. I therefore refuse the renewed application for permission.