IN WESTMINSTER MAGISTRATES COURT

Before:

Senior District Judge Goldspring (Chief Magistrate) for England and Wales

Between:

The Government of Ukraine

Requesting State

– and –

Artem Dmytruk

Defendant

- -

Joel Smith KC and Amanda Bostock instructed by The CPS Extradition Unit for the Requesting State

Edward Fitzgerald KC and Ben Joyes, instructed by Hodge Jones and Allen for the Defendant

4th March 2026

- -

Approved Judgment

Introduction

1.The Government of Ukraine ('the Requesting State or 'RS') have submitted a request dated 1st October 2024 for the extradition of Artem DMYTRUK ('the Requested Person / defendant or

'RP'). It followed a provisional request under which a domestic warrant was issued by Westminster Magistrates' Court on 16th September 2024 for the RP's arrest.

2.The full request was certified under **section 70** of the Extradition Act 2003 ('the Act') on behalf of the Secretary of State on 2nd October 2024 and is governed by the provisions of Part 2 of the Extradition Act 2003; the Extradition Act 2003 (Commencement and Savings) Order 2003 (S.I. 2003 No. 3103); and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (S.I. 2003 No. 3334) through which Ukraine is not required to prove a prima facie case.

Context of Requesting State

3. All parties are agreed that the launching by the Russian Federation of a full-scale invasion of Ukraine on 24 February 2022 forms the essential and unavoidable context in which this extradition request must be considered. The challenges raised in this case do not arise in a vacuum; they are inextricably linked to the realities on the ground created by an ongoing international armed conflict. This creates a novel and complex prism through which the court must consider the issues, they are difficult issues. The court's difficulty is twofold.

4. Firstly, the proper consideration and disposal of the issues before it necessarily proceeds at a pace that cannot keep step with the rapidly changing and often unpredictable events of an active war. Conditions relevant to risk, safety, infrastructure, and institutional functioning may alter significantly over short periods of time. Secondly, part of the court's task in extradition proceedings is to look forward and assess potential future risks for the requested person should extradition take place. In the present circumstances, that evaluative exercise is rendered particularly complex.

5. The Court is acutely conscious that the armed conflict in Ukraine has generated almost unprecedented levels of media coverage, commentary, and public discourse. It would be difficult for any judicial office holder to avoid exposure to news reports, images, and narratives concerning the conflict over the past 4 years. However, this Court emphasises at the outset a fundamental principle of judicial decision-making, that this judgment is based **exclusively upon evidence** adduced before the Court and subject to testing through the adversarial process.

6. The danger of what might be termed "infected decision-making" whereby conclusions are unconsciously influenced by unverified media reports, partisan commentary, or graphic but unexamined images is particularly acute in cases touching upon ongoing armed conflicts. News reporting, however well-intentioned, typically lacks the safeguards inherent in judicial proceedings, sworn testimony, cross-examination, disclosure obligations, and the opportunity for challenge and rebuttal. What appears compelling in a news report may prove unreliable when subjected to forensic examination; what seems obvious from a photograph may be misleading without proper context and authentication.

7. In the context of extradition proceedings, where the liberty of the individual stands in the balance and where international comity and treaty obligations intersect with fundamental rights

and protections, the court must be especially vigilant in distinguishing between and giving proper weight to what it may have read or seen in media reports and what has been properly proven through admissible evidence.

8. The former may inform general knowledge of context; only the latter can form the basis for judicial findings, although it might still include media reports. This Court has therefore approached the evidence with appropriate caution, evaluated each party's submissions on their merits, and reached its conclusions based solely upon the materials properly before it.

9. While the court must make its assessment conscientiously and on the basis of the material before it, the volatility inherent in an active conflict inevitably limits the precision with which future conditions can be predicted.

10. Those limitations are not merely theoretical or abstract. They have practical consequences for the availability, quality, and reliability of evidence. Armed conflict disrupts state institutions, affects record-keeping, restricts access to witnesses, and constrains the ability of parties to obtain or verify contemporaneous information.

11. The court must therefore assess the evidence with an appreciation of those constraints, recognising both what can properly be inferred and, equally, what cannot safely be assumed. Concrete examples of these difficulties are apparent in this case.

12. Ukraine has formally derogated from Article 6 of the European Convention on Human Rights and has imposed martial law. The conflict itself ebbs and flows without any settled or predictable trajectory.

13. Secondly, the pattern of bombing and military activity undertaken by the Russian Federation has been shown to be both unpredictable and subject to rapid change, whether in intensity, focus, or geographical location. These factors combine to create an environment in which assurances about future conditions, while relevant, must be evaluated against an unstable and evolving backdrop.

14. The court does not approach these matters by speculating or by substituting conjecture or what it has read and seen for evidence. Its task remains to decide the case on the evidence as it stands at the date of the hearing, applying the correct legal tests. However, the court is also entitled, indeed required, to acknowledge the practical limits that war imposes on certainty, foresight, and evidential completeness. It is against that backdrop, and on the evidence that is presently before me, that I set out below my rulings and decisions.

The request

15. The defendant is sought to stand trial in relation to two offences as follows.

(i) 3 March 2022 – Whilst the RP was engaged in monitoring a public curfew in the Odesa region (imposed 23:00-5:00 in connection with the war), he stopped two

members of the Security Service of Ukraine who were travelling in their car. They provided identity documents and a password to justify their movements during curfew, but the RP questioned their authenticity and required them to attend the police station. Once there, their identity was confirmed by telephone, but, as the two officers went to leave the police station, the co-defendant of the RP prevented one from moving 'threatening him with the use of a weapon' and 'demanding that he remain still' whilst the RP followed the other, striking him to the head and back with his fists and causing him to fall to the ground. Whilst he was on the ground, the RP pinned the officer down 'with his knee and continued to punch him in various parts of the body, including the chest using his right fist' whilst speaking 'obscenely' about the individual as a law enforcement officer. The RP's co-defendant then approached the officer lying on the ground, aimed a weapon at his leg and 'threatened to kill him using the weapon.' They both then took the Officer's service weapon (which fired rubber bullets only). The Officer suffered bruises and hematomas on both sides of his chest.

(ii) 5 October 2023 – The RP grabbed an individual by the hand and clothing, verbally insulted him, used foul language, and accused him of committing fraud. The person tried to get away but was then pushed and slapped to the face before being struck 'several more times in the face.' The RP then 'began to squeeze…the neck but, losing his balance, fell to the ground with him.' Once on the ground, the RP continued to press the individual's neck until someone intervened. The injured individual stood up and began to leave whereupon the RP attacked him again, inflicting multiple blows on the victim's head and face, causing him to lose consciousness. Only after this did Dmytruk stop striking the victim.' The victim received a concussion, fractured skull and fractured nose plus bruising, hemorrhages, and contusions to the rest of his face.

16. Notices of suspicion relating to each offence are appended to the request (from which the above facts are taken) both dated 25th August 2024 (RS B1 Index.9&10). A copy of the resolution which consolidated the two sets of proceedings is also provided and dated 28th August 2024.

17. A warrant for pre-trial detention was issued by Pecherski District Court in Kyiv on 29th August 2024. Submissions were made by the RP's defence lawyer, who suggested 'milder preventative measures' could be applied given the RP had only left Ukraine 'due to threats of murder against him, including those spread in the media space.'

18. The decision is appended to the request and includes confirmation that the RP took 'the oath of loyalty to Ukraine as a People's Deputy of Ukraine' on 29th August 2019. It also establishes that, despite the presence of the RP's lawyer at the hearing and his status as a People's Deputy, his whereabouts were not known to the court at the time that the warrant was issued.

19. The 'Resolution on putting the suspect on the wanted list' of the same date confirms that the RP had 'switched off the subscriber numbers of mobile operators known to the pre-trial investigation body, which he constantly used'. In the course of the pre-trial investigation, information was received that Dmyrtuk is abroad and moved between European countries.

20. A certificate of evidence is also appended to the request and confirms, contrary to the RP's assertion that the investigation materialised after he spoke against a Bill on 20th August 2024, that investigatory documents were prepared or obtained throughout the period since the offence with evidential documents dated as follows before the Court - 9/3/22, 23/5/22, 18/1/23, 16/10/23, 20/10/23, 6/11/23 and 19/11/23.

21. The maximum sentence which could be imposed is 7 years' imprisonment in relation to the theft of a firearm, 5 years in relation to intending to cause medium gravity bodily injury, 3 years in relation to threats or violence against a law enforcement officer and 5 years in relation to hooliganism. The relevant legislation is appended to the request.

Additional information served

22. The request includes the following guarantees provided by the Prosecutor General's Office in the form of further information and assurances.

- That the criminal proceedings are 'not aimed at prosecuting on account of political motives or his race, religion, nationality.'

- That the RP will only be prosecuted for the offences upon which he has been extradited and will not be deported or surrendered to a third country.

- That the RP has the right to a fair trial and defence including the assistance of a lawyer.

- That if sentenced to imprisonment, he 'will not be subjected to any treatment that may endanger his physical and mental integrity and the conditions of imprisonment will not be inhumane, degrading or humiliating.'

- That UK officials will have the opportunity to visit the RP in detention, that he will 'at any time be able to contact the said representatives who will have the opportunity to receive information on the status of the criminal proceedings…and be present at the trial.' Upon request, the UK will be informed of the final decision made in the criminal proceedings.

- If held in pre-trial detention or post-conviction, the RP would be in the 'detention centers of the State Criminal Enforcement Service of Ukraine' whose activity is 'based on execution of the requirements of the Ukrainian current legislation, international treaties and other legal acts adopted by the United Nations, Council of Europe, and other organizations.'

- The court hearing of the case will be carried out in the territory remote from the area of active hostilities and the RP, if in detention, will be placed in one of the institutions located in

the western part of Ukraine 'which has facilities…that comply with international obligations of Ukraine in the field of human rights and is equipped with appropriate shelter'.

23. The first annex to the request confirms that, although Ukraine notified the Council of Europe on 18th April 2022 of an 'inability to guarantee the full execution of obligations under international treaties' upon its territory since the Russian invasion, the 'notification is based on the general principle of international law concerning the execution in good faith of international treaties by their parties' and in fact should be understood only to apply 'on the territories of Ukraine temporarily occupied by the Russian Federation. In the rest of the territories of Ukraine, international treaties are fully executed.'

24. In terms of derogations from the ECHR, restrictions to Article 6 i.e. the right to a fair trial are possible only in certain cases and under exceptional circumstances as provided for by Article 615 of the Criminal Procedure Code of Ukraine which provides a 'Special regime of the criminal proceedings under the conditions of martial law'.

25. In those circumstances, certain rights cannot be restricted, including the right to legal assistance, the presumption of innocence, prevention of double jeopardy, the right to remain silent and that all are equal before the law.

> 'The imposition of martial law or state of emergency also cannot be used as a ground for torture, cruel or degrading treatment or punishment, or for any restrictions on the rights to life, freedom of thought, conscience and religion.'

26. Finally in relation to this annex, examples are given of a number of cases in which the European Court have been satisfied that detention in Ukraine did not violate Articles 2&3 of the convention on the grounds of being dangerous as a result of Russian aggression.

27. This is said to be as a result of the court noting that 'the situation in the institutions is under control, the management is taking all measures to ensure their uninterrupted operation and the observance of fundamental rights and freedoms, and the safety of prisoners remains a priority'.

28. The first piece of further information from Ukraine is dated January 2025. Although its contents have been enlarged upon since such that this document is now largely obsolete, it does confirm at the outset that the criminal proceedings are 'exclusively in connection with a criminal offence' and have 'nothing to do with his religion, political activities or powers as a Member of Parliament of Ukraine'. A further guarantee is offered in this respect.

29. In respect of prison conditions, the document confirms as follows.

- that no complaints about health and safety or conditions for those extradited to Ukraine since the invasion have been made or registered with the ECtHR.

- The RP would be detained in Zakarpattia (No9) pre-trial (photographs attached) which is in the West 'as far as possible from the zone of active hostilities, has two bomb shelters and

continues to operate as intended. No civilian deaths have been recorded in the region and only 1 person has been injured. The prison was under capacity at the time of writing and a cell with at least 4m2 would be provided to the RP.

- Representatives from Germany, Austria and Italy have conducted visits to Ukrainian prisons which have resulted in positive assessments and an increase in positive responses to extradition requests. 87 people have been transferred into Ukraine via extradition requests since the invasion including from Poland (49) Germany (17), Spain (3), Czech Republic (2), Slovak Republic (2), Lithuania (2) , Bulgaria (2) and single individuals from Austria, Italy, Sweden, Norway, Estonia, Moldova, Georgia, Belgium, Romania and Kazakhstan.

30. In relation to the fairness of the trial process, the document confirms that the RP will be brought before the Court within 48 hours of his return to Ukraine and the decision on detention will be re-assessed including the possibilities of bail and house arrest.

31. The independence of prosecutors is guaranteed under the criminal procedure of Ukraine, and a special procedure applies to Members of Parliament to ensure a guarantee of independence and inability to interfere with their political activities. Despite the invasion, the operation of courts in Kyiv has not been suspended and justice is being 'properly administered' (p.176).

32. Finally, the document confirms that an update to the Council of Europe on 29th April 2024 cancelled some of the derogations previously made in respect of international obligations. As before, even this partial derogation, is only applied in practice to the temporarily occupied territories of Ukraine and not to the entire territory. The document makes clear that 'throughout the territory controlled by the Government of Ukraine, compliance with international obligations and the protection of human rights are fully ensured'.

33. A second piece of further information ('FI2') is dated 15th April 2025 and responds to documents submitted by the defence asserting political motivation The response confirms the proceedings 'are based exclusively on objective evidence, gathered in full compliance with due process and the established legal framework of Ukraine'. It has been 'conducted by independent law enforcement agencies under the continuous scrutiny of the judiciary, thereby ensuring both procedural justice and adherence to the rule of law.' It confirms that adherents to the Ukrainian Orthodox Church of the Moscow Patriarchate 'continue to practise their faith without hindrance, persecution, or any form of interference with their religious or political beliefs.'

34. Alongside, FI2 confirms that the RP can participate in court hearings remotely from Zakarpattia in order to ensure his safety. Facilities are available, which would include the ability for his legal team to be present with him at the prison and in the court room.

35. Should the RP object to remote attendance, application will be made to transfer the criminal proceedings to a court in geographical proximity to the prison. Should that application be rejected, he could be moved to Bila Tserkva Prison (No.35), which has had cells renovated for

extradited people which meet international standards. Post conviction, the RP would be held in either Drohobych (No.40) (no longer the position, see below) or Kolomyia (No 41) which are remote from the zone of active hostilities, have never been affected by the conflict and are equipped with bomb shelters. Convicts therein are provided with minimum 4m2, and the RP would be provided with a repaired cell which meets international detention standards (p.188).

36. The third further information ('FI3') dated 22nd September 2025 contains the most substantive information and finalised position following liaison with Ukraine and consideration of the defence reports, it deals with each area of evidence or concern in turn.

Formal Requirements

37. At the initial stages of the Extradition hearing the appropriate judge must decide if the documents set out in Section 78(2)(a) EA 2003 are included within the documents sent by the Secretary of State, the particulars of the requested person are set out in within the request itself (**Section 78(2)**(b)), the particulars of the offence specified in the request are set out in the request (**section 78(2)**(c)) and that the papers include a certificate of conviction for the requested person(**section 78(2)**(e).

38. In addition **section 78(4)** EA 2003 requires the judge to satisfy himself as to the identity of the person before him at the hearing is the requested person, that the request discloses an extradition offence (**section 78(4)**(b)) and whether copies of the papers sent to the judge from the secretary of state have been served upon the requested person (**section 78(4)**(c) EA 2003).

39. Although no challenge on any of the above matters is raised, I must nonetheless satisfy myself that each requirement is met. I have done so and each is met.

40. Although not formally raised as a challenge I am nonetheless obliged to satisfy myself that the request sets out conduct (for each offence), along with the supporting documents that disclose extradition offences as required by **section 137** of the 2003 Act as amended.

Section 137(2) & (3) provides:

(2) The conduct constitutes an extradition offence in relation to the category 2 territory if the conditions in subsection (3), (4) or (5) are satisfied.

(3) The conditions in this subsection are that (a) the conduct occurs in category 2 territory.

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom.

(c) the conduct is so punishable under the law of the category 2 territory.

41. All of the necessary matters are fulfilled in this case; I am satisfied so that I am sure that the request discloses extradition offences. The conduct disclosed clearly meets each of the

necessary elements for, at the very least, offences contrary to section 47 Offences Against the Persons Act 1861, ABH.

Challenges raised

42. The Requested Person challenges extradition on the following grounds:

i. ***Extradition is barred by reason of 'extraneous considerations' due to the political imperatives driving these proceedings, S81 EA 2003 (a) and (b)***

ii. ***Extradition is incompatible with his rights under Article 2, ECHR, on account of the risk of death the Armed Conflict creates. S87 EA 2003***

iii. ***Extradition is incompatible with his rights under Article 3, ECHR, on account of the prison conditions in Ukraine, S87 EA 2003***

iv. ***Extradition is incompatible with his rights under Article 5, ECHR, on account of the risk of Arbitrary detention. S87 EA 2003***

v. ***Extradition is incompatible with his rights under Article 6, ECHR, because there is no prospect of his receiving a fair trial of the allegations against him in Ukraine, S 87 EA 2003***

vi. ***Extradition is incompatible with his rights under Article 8, ECHR, disproportionate interference with his right to a private and Family life on the grounds under each challenge, S87 EA 2003***

vii. ***Extradition is incompatible with his rights under Article 9, ECHR, on account of the changes under law 384 and its restrictions on freedom of religion, S87 EA 2003***

viii. ***Extradition would be oppressive due to Ill health, Section 91 EA 2003***

Ix. ***The extradition proceedings amount to an abuse of this Court's processes.***

The legal Framework.

Extraneous Considerations – Section 81 EA 2003 (a and b)

43. Section 81 of the Act provides that a person's extradition is barred by reason of extraneous considerations if (and only if) it appears that:

> (a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made for the purpose of prosecuting or punishing him on

account of his race, religion, nationality, gender, sexual orientation, or political opinions, or

(b) if extradited he might be prejudiced at his trial or punished, detained, or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation, or political opinions.

45. To rely on **section 81**, a defendant cannot simply point to a general risk of prejudice, rather he or she must be able to show that there is a causal link between the proceedings themselves, or the likely prejudice, and the identified ground (see, for example, the judgment of Simon J in ***McKenzie v. Examining Court No 9 Palma de Mallorca [2008] EWHC 3187 (Admin)).*** Moreover, the burden is on a defendant to show that causal link (per ***Hilali***).

46. Where a defendant relies on the "purposes limb" (**section 81(a)**), the Court is required to assess the state of mind of the authority responsible for the issuing of the warrant at the time the request was issued, in order to determine whether or not the purpose was to punish the requested person on one of the identified grounds (***Slepcik v. Governor HMP Brixton [2004] EWHC 1244 (Admin)***, and Maurice Kay LJ at §23).

47. Where reliance is placed on the "consequences limb" (**section 81(b)**), the Court must "predict" the prejudice a requested person might suffer as a result of one of the identified grounds (Slepcik ibid.).

48. The applicable legal principles were considered by Burnett J, as he then was, in ***Nikolics v. The City Court of Szekszard (Hungary) [2013] EWHC 2377*** at para 15 of his judgment where he stated:

> "In considering whether the evidence establishes the section 13(b) test there is an important background feature in cases involving category 1 territories, because they are members of the European Union and state parties to the Convention. There is an assumption that such states will vindicate the convention rights of those returned to them: see ***Gomez and Goodyear v. The Government of the Republic of Trinidad and Tobago [2009] 1 WLR 1038*** at para 35; ***Krolik and others v. Several Judicial Authorities of Poland [2013] 1 WLR 490*** at paras 3-7 and ***Rot v. District Court of Eubin Poland 2010 EWHC 1820 (Admin)*** at paras 10-11. However, in ***Agius v. Malta [2011] EWHC 759 (Admin)*** Sullivan LJ noted that the assumption that the state party to the ECHR would abide by its obligations was:
>
> "capable of being rebutted by clear cogent evidence, which establishes that, in any particular case, extradition would not be compatible with the defendant's convention rights."

49. That approach, developed in the context of arguments under **section 21** of the 2003 Act that extradition would violate convention rights, is no less appropriate when considering questions which arise under Section 13(b). Therefore, there is an assumption that the judiciary will try the appellant fairly, not discriminate against him. However, that assumption is capable of being displaced by cogent evidence.

50. In **Nikolics (*Supra*)** a Roma alleged that he would face racial prejudice from Hungarian judges if extradited to stand trial for theft and argued that extradition was barred under section 13(b) of the 2003 Act. The District Judge had rejected this. There was evidence about the discrimination against the Roma in Hungary, the overrepresentation of Roma in the criminal justice system there, and the disturbing political situation in the country. Burnett J applied ***Fernandez and Hilali*** against the background of the presumption operating in favour of the judicial authorities in Hungary, a member of the European Union and a signatory to the European Convention of Human Rights. The evidence, he held, did not demonstrate a "serious possibility" or "substantial grounds for thinking" that the circumstances contemplated by section 13(b) might come to pass and he dismissed the appeal.

51. Thus, the test for considering whether extradition is barred because of mistreatment by reason of the factors set out in **section 81(b)** is whether there is a "reasonable chance", "substantial grounds for thinking" or "a serious possibility" of this occurring.

52. This test is less demanding than that in Article 3 of the Convention, where those resisting extradition must show strong grounds for believing that, if returned, they will face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment, or the test in Article 6, where it must be shown that a person has suffered or risks suffering a flagrant denial of a fair trial (***Ullah v Special Adjudication [2004] 2 AC 323***, paragraph 24 per Lord Bingham).

53. Nonetheless, the outcome of the three cases I have mentioned, ***Fernandez, Hilali and Nikolics***, where the requested person was not able to surmount the bar set by the equivalent of **section 81(b)**, demonstrates the type of evidence needed to be adduced for the court to conclude that there is a current risk of mistreatment by reason of extraneous circumstances.

54. As is referenced in Nicholls, Montgomery and Knowles on The Law of Extradition and Mutual Assistance in relation to **section 13 / 81**, which are identically worded, they reflect the grounds for claiming refugee status under Article 182 of the convention protocol relating to the status of refugees 1951 and 1967, where the persecution concerned is prosecution.

55. This provides that persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion is grounds for claiming refugee status, it follows that some of the case law arising in the asylum context must therefore be relevant in the extradition context.

56. As foreshadowed above the principles concerning persecution were comprehensively reviewed and enunciated in the Immigration Appeal Tribunal when Mr justice Collins set out the principles in ***Gomez v the Secretary of State for the home department.***

57. Those principles can be summarised as follows.

- A broad purposive construction should be given to the political opinion ground, see paragraph 21. In particular the word political should be given a broad meaning, see paragraph 27 to 40. It is not necessary to show the prosecutor's only motive is political persecution: it is sufficient if political reasons form part of his motivation, (see paragraph 22.)

- It is generally the existence of a group of opponents that concerns the government or other persecute are sufficient to provoke oppression, see paragraph 23. In order to show persecution on account of political opinion it is not necessary to show political action or activity, paragraph 24. Political opinions may be those expressed by the persecuted person or maybe those imputed to him by the persecuting government, see paragraph 26. It is not appropriate to maintain a rigid distinction between political opinions on the one hand and economic opinions on the other, see paragraph 43.

- Then in Iqbal, the asylum and immigration tribunal summarised how in asylum claims, those that are based on prosecution amounting to persecution should be dealt with in summary.

- Although it is not the purpose of the asylum determination process to judge guilt or innocence, nonetheless a factual evaluation as to whether there is a real risk that the claimant faces injustice rather than justice must be made. Whether prosecution amounts to persecution is a question of fact, and all relevant circumstances must be considered on a case by case basis. The criminal justice process in the country of origin must be looked at as a whole, with possible harms considered cumulatively and not separately. Whether prosecution amounts to persecution must be analysed by reference to international human rights norms. Prosecution does not amount to persecution unless likely failures in a fair trial process go beyond shortcomings and pose a threat to the very existence of the right to fair trial when considering whether there is a general risk of persecution to any persons subjected to the criminal law process in a given country. It is important to establish the scalar relevant human rights violations, particularly in relation to mistreatment in detention and the right to fair trial, and, using article three of the convention as a benchmark, it is useful to ask whether the level of human rights abuse rises to the level of a consistent pattern of gross and flagrant or mass violations of those rights.

58. ***In Asliturk v government of Turkey***, in which McCombe J found

59. *I would merely add that, having heard the arguments, I am not presently convinced that the phrase political opinions in* ***section 6*** *(of the extradition act 1989), is confined to the concept of beliefs in particular policies. Both counsels were agreed that the concept should be given a wide*

meaning, favourable to an applicant like Mrs Asliturk. If that is right, I do not see why the statutory expression political opinions should not be taken to include a political standpoint by a person that his or her leadership or other position in a government, national or local, would be better than that of arrival sharing a similar political philosophy. Opinion as to whose governance is more or less desirable is equally in my view apolitical opinion.

60. In ***Antonov and Baranauskas v Lithuania*** Atkins LJ and Simon J preceded on the basis that we are prepared to accept that the words political opinions in section 13 , as in section 6 at the 1989 act, are not confined to concepts of a belief in a particular political party but have a broader ambit.

61. Further, the broader approach is consistent with the definitions applied in extradition and asylum cases as set out in the divisional court decision in ***R (on the application) of Troitino v the National Crime Agency*** in which Lord justice Burnett, as he was then said

> *the human rights bars in sections 21 and 21 a, and the extraneous considerations bar in **section 13** of the 2003 Act should be fully presented and resolved in the extradition proceedings. They should not be reserved for any asylum claim nor should the extradition proceedings be adjourned to await the outcome of the asylum proceedings, unless exceptionally good reason to the contrary is shown.*

62. Gomez has recently been endorsed by the Supreme Court in the asylum context in ***RT (Zimbabwe) v SSHD*** in which Lord Dyson Justice in the Supreme Court held

> *The idea, if you are not with us, you are against us, pervades the thinking of dictators. From their perspective, there is no real difference between neutrality and opposition. In Gomez, a decision of the immigration Appeal Tribunal put the point well at paragraph 46.*
>
> *It will always be necessary to examine whether or not normal lines of political and administrative responsibility have become distorted by history and events in that country. This perception also explains why refugee law has become to recognise that in certain circumstances neutrality can constitute a political opinion. In certain circumstances, for example where both sides operate simplistic ideas of political loyalty and political treachery, fence sitting can be considered a highly political act paragraph.*

63. As to the second limb of **section 81**, which again mirrors exactly the wording in **section 13** of part one of the act, the parties are agreed that it is concerned with what may happen in the future, the defendant does not need to show that it is more likely than not that he will be prejudiced. It is sufficient if he can establish that there is a reasonable chance or serious possibility of prejudice. The leading cases ***Fernandez against Singapore*** where the House of Lords considered the provisions of its predecessor section under The Fugitive Offenders Act 1967, it was suggested that the defendant had to establish a defence on the balance of

probabilities, but this was rejected, Lord Diplock giving the leading judgement of the court said the following

> *My Lords, bearing in mind the relative gravity of the consequences of the court's expectation being falsified either in one way or in the other, I do not think that the test of the applicability of para (c) is that the court must be satisfied that it is more likely than not that the fugitive will be detained or restricted if he is returned. A lesser degree of likelihood is, in my view, sufficient; and I would not quarrel with the way in which the test was stated by the magistrate or with the alternative way in which it was expressed by the Divisional Court. 'A reasonable chance', 'substantial grounds for thinking', 'a serious possibility' – I see no significant difference between these various ways of describing the degree of likelihood of the detention or restriction of the fugitive on his return which justifies the court in giving effect to the provisions of s 4 (I) (c).*

Therefore the test in ***Fernandez*** is the one that is applicable to arguments relating to **section 81B**.

64. Of course establishing that the bar encompasses cases where the requested person may not have personally given "political opinions" but includes cases where the confluence of the motive behind the request and political pressure or as in some previous Russian cases where the interests of the State, big business and influential businessmen are so inseparable as to be in effect one in the same thing , is only the scope, the court must still consider whether on the evidence the causational link between the request and the wider, inseparable political motives, are proven by the RP to the standard set out above.

Section 87 EA 2003 – Human Rights

65. S87 EA 2003 States: -

(*1) If the judge is required to proceed under this section (by virtue of **section 84**, 85 or 86) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).*

(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(3) If the judge decides that question in the affirmative, he must send the case to the Secretary of State for his decision whether the person is to be extradited.

66. Extradition proceedings may be barred if there is either a real risk that extradition will breach the requested person`s Convention Rights: (see Soering v UK (1989) EHRR) or where the domestic extradition procedure would result in a violation of the Convention.

International Armed Conflicts and Article 2

General Principles

67. There is no rule of domestic law or Convention law which prohibits extradition solely because the requesting state is involved in an international armed conflict. Whether extradition is permissible remains governed by the Extradition Act 2003, including the ordinary human-rights assessment under **section 87**. The existence of armed conflict is not determinative but forms part of the factual matrix in the human-rights analysis.

68. The European Court of Human Rights has consistently held that reference to a general human-rights problem or a general situation of violence in a particular country is not, in itself, sufficient to prevent extradition or removal. Articles 2 and 3 will only be engaged by the general security situation in the most extreme cases.

69. The applicable threshold under Article 2 is whether there are substantial grounds for believing that the individual would face a real risk to life on return. The court has made clear that this threshold is crossed only where the level of violence is so intense that any individual would face a real risk of death simply by being present in the country or region concerned. This is an exceptional standard and is rarely met.

70. The assessment must be conducted with reference to the specific place to which the requested person will be returned, and not by reference to the national situation as a whole. Relevant considerations include whether active hostilities are taking place in the relevant region, the proximity to the front line, the frequency and recency of attacks, and evidence of civilian casualties in that location.

71. In assessing risk under Article 2 in the context of armed conflict, the court must take account of the existence and effectiveness of protective and mitigating measures. These include geographical distance from areas of active hostilities, the availability of shelters, evacuation procedures, the ability to relocate detainees if the conflict spreads, and clear and specific assurances provided by the requesting state.

72. The fact that other Contracting States have continued to order extradition to a country involved in an armed conflict is relevant contextual evidence. It confirms that the existence of armed conflict does not per se displace Convention protections or prevent extradition, and that the assessment remains an evidence-based evaluation of individual risk.

73. An international armed conflict itself does not give rise to a breach of **Article 2 ECHR**. Extradition will be incompatible with Article 2 only where, on a careful and evidence-based assessment, there are substantial grounds for believing that the individual faces a real and personal risk to life, assessed by reference to location, intensity of hostilities, and the effectiveness of protective measures.

74. In the immigration context, ***LM v Russia the ECtHR*** considered the extent to which removals to Syria in 2015 engaged Art. 3 ECHR. At para. 77, the Court described the information before it

with respect to the situation in Syria. The quoted passage was from a UNHCR report which noted that:

> *"Nearly all parts of the country are now embroiled in violence, which is playing out between different actors in partially overlapping conflicts and is exacerbated by the participation of foreign fighters on all sides. Fighting between the Syrian government forces and an array of anti-government armed groups continues unabated."*

75. At para. 80, a UK Home Office document is quoted (fifth para. down) as stating:

> *"The level of indiscriminate violence in the main cities and areas of fighting in Syria is at such a level that substantial grounds exist for believing that a person, solely by being present there for any length of time, faces a real risk of harm which threatens their life or person."*

76. At para. 81, the UN Secretary General is cited as stating (starting in line 3):

> *"Widespread conflict and high levels of violence continued throughout the country and that the conduct of the hostilities by all parties continued to be characterised by a widespread disregard for the rules of international humanitarian law and the protection of civilians."*

77. The Applicants' case before the ECtHR was that they originated from Aleppo and Damascus where heavy and indiscriminate fighting had been ongoing since 2012 and that their removal to Syria would therefore breach Arts. 2 and 3 ECHR (see para. 110). The Court found that the Russian authorities had not considered this claim properly and then went on to address it themselves. You can see that from para. 119 where the Court made the observation – that despite the evidence before the court:

> "*The Court notes that a general situation of violence will not normally in itself entail a violation of art.3 in the event of expulsion; however, it has never ruled out the possibility that the general situation of violence in a country of destination may be of a sufficient level of intensity as to entail that any removal to it would necessarily breach art.3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return."*

78. The Court went on to consider its case-law on removals to Somalia where four criteria were identified as an "appropriate yardstick" to assess the level of violence in a particular area (see para. 121, the case of ***AM & AM***):

(a) first, whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or were directly targeting civilians.

(b) second, whether the use of such methods and/or tactics was widespread among the parties to the conflict.

(c) third, whether the fighting was localised or widespread; and

(d) fourth, the number of civilians killed, injured, and displaced as a result of the fighting.

79. On the facts of ***LM***, the ECtHR found those criteria to be met in relation to Aleppo and Damascus such that removal would breach Art. 3 (para. 123-125). It is important to note that this assessment was coloured by evidence that: (a) armed militia had killed one applicant's family in the area to which he would be returned; (b) the other applicant was a Palestinian refugee and was therefore considered to be particularly at risk; and (c) there was evidence of a risk of detention and mistreatment by the Syrian authorities on account of the conflict (see para. 124). Or, to put it another way, the evidence of risk went well beyond the risk arising from airstrikes.

S 87 EA 2003 Article 3 – ECHR – Prison Conditions

80. The test to be applied in Article 3 cases is whether there are "strong grounds" for believing there would be a "real risk" of a breach of article 3 if the RP were to be extradited: ***R (Ullah) v Special Adjudicator [2004] UKHL 26***, §24.

81. The general principles were recently restated by the Grand Chamber in ***Mursic v Croatia (2016) App 7334/13***, October 20 at §§96-141 (underlining added), which held that:

> *"…96. Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour…in the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured…*

82. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention…

83. When inmates appeared to have at their disposal personal space measuring between 3 and 4 sq. m the Court examined the (in)adequacy of other aspects of physical conditions of detention when making an assessment under Article 3. In such instances a violation of Article 3 was found only if the space factor was coupled with other aspects of inappropriate physical

conditions of detention related to, in a particular context, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements…

84. The Court would also observe that no distinction can be discerned in its case-law with regard to the application of the minimum standard of 3 sq. m of floor surface to a detainee in multi-occupancy accommodation in the context of serving and remand prisoners…

85. Specifically, in relation to presumed compliance with Article 3, the strength of any presumption of compliance with the ECHR within a Council of Europe member state will necessarily be context specific. As the Supreme Court recently underlined in ***Zabulon v Matsuzaka District Court, Hungary [2021] UKSC 14,*** any consideration of whether a requesting state will abide by commitments it has made in the context of extradition proceedings is a fact-sensitive exercise. Any presumption of compliance is in any event rebuttable and is "most readily rebutted where the Court of Human Rights has issued a 'pilot judgment' against the requesting state in question. Under Rule 61 of the Court's rules a pilot judgment can be made where there are '... structural or systematic problems or other similar dysfunction...' which leads to multiple applications to the Court about the same issue": ***Iosekvich v Government of the Russian Federation [2018] EWHC 696 (Admin)*** [Green J, with whom Hickinbottom LJ agreed] at §43.

> *' In relation to the burden of proof, the initial burden lies on the requested person to satisfy the real risk test. Once that is made out, it falls to the requesting state to "dispel any doubts." Sanchez-Sanchez v. the United Kingdom [GC], Application no. 22854/20 held as follows at [87]:*
>
> *"... [I]t is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence has been adduced, it is for the Government to dispel any doubts raised by it (see, for example, **F.G. v. Sweden**, cited above, § 120 and **Saadi**, cited above, § 129)."*

86. The threshold for establishing a real risk is greater than a 'mere possibility', but less than the balance of probabilities: ***Saadi v Italy (2009) 49 EHRR 30 at [131] and [140]; Badre v Court of Florence [2014] EWHC 614 (Admin)*** at [40].

87. ***Aranyosi [2016] QB 921*** held that a requested person will need to rely on the following types of evidence to establish a real risk:

> *"89. … [I]nformation that is objective, dependable, specific, and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may*

be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN."

The law on assurances

88. Once the requested person has discharged the initial burden to demonstrate a real risk, the legal burden shifts to the State 'to dispel any doubts about it' (***Saadi*** at [129] and, in the context of extradition, see, ***Ryabikin v Russia(2009) 48 EHRR 55*** at [112]). That means satisfying the court, to the criminal standard of proof, that the violation will not occur.

89. The fact that the requesting state has signed up to international conventions and has promulgated domestic laws affording protection to fundamental rights is:

'… not in themselves sufficient to ensure adequate protection against the risk of ill treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the fact that the requested person can apply to the European Court of Human Rights is not relevant as "the question that arises under ***section 87*** *is whether extradition is compatible with Convention rights, rather than whether there would be a remedy for any breach of Convention rights":*

90. ***In Lutsyuk v Government of Ukraine [2013] EWHC 189 (Admin)****,* the Divisional Court ruled, in reliance upon evidence from Prof Bowring (whose report to the Court was dated September 2012) and Valentyna Telychenko, that the Article 3 bar was established on account of general prison conditions in Ukraine.

91. The Court observed, even, that SIZO's appeared to be worse than prison conditions: paras 20-24.

"20. What then is the outcome? The starting point must be the PS case: "Imprisonment in the Ukraine is likely to expose a detainee to the real risk of inhuman or degrading ill-treatment that would cross the Article 3 threshold". That effectively applies the approach given by Ullah. It is consistent with relativism, as far as that goes, as described in the Wellington case. It is the considered conclusion of a specialist tribunal, which in authority we should respect and accept, subject only to later evidence which tends to contradict it; but, in my judgment, there is none. Professor Bowring's fresh report paints a picture which, if anything, displays a deteriorating state of affairs. It is to some extent supported by Ms Telychenko, who also gives evidence as I have said (paragraph 4) that the appellant would be sent to a SIZO, although that would be while proceedings for escaping justice are taken against him, and the appellant says that would violate the specialty rule. I should note that Mr Hardy expressly (and in my view rightly) disavowed any criticism of Professor Bowring.

I am inclined to accept that there is some doubt as to where the appellant would be detained if he were returned. More important, I accept that a great deal of the material relied on concerns SIZOs rather than penal establishments. I also have some regard to the fact that, unlike the District Judge, we have heard no live evidence from Professor Bowring. I accept that Ukraine allows substantial opportunities for the monitoring of prison conditions and that there is substantial engagement with the CPT. But it is noteworthy that, as Professor Bowring points out in his September 2012 report, the latest violations "were found to have occurred despite the fact that the CPT visited Ukraine in February 1998, with a report in 2002; in July 1999, with a report in 2002; in September 2000, with a report in 2002; in November and December 2002, with a report in 2004; a visit in October 2005, with the report in 2007; a visit in December 2007, with a report in 2009; and a visit in September 2009, with a report in 2011". This speaks loud as to the gap between aspiration and achievement, about which the document of the Ukrainian Government report really tells us nothing. The fact is that aside from that document Ukraine has put in no evidence for this court's consideration. It was, of course, open to them to do so.

The appellant does not have to prove that an extraditee sent to any jail whatever in Ukraine would inevitably suffer Article 3 ill-treatment; he has to meet the Ullah test. That, in my judgment, he has done. There are substantial grounds for believing that there is a real risk that on being returned to Ukraine he would be subjected to such ill-treatment. That is the case, whatever the position may be in relation to other potential extradites in other cases. I have reached this conclusion on evidence before this court.

92. In previous cases, requesting authorities have sought to provide assurances that, if the requested person is extradited, they will be held in prisons, or parts of prisons, which do not suffer from the defects identified in the pilot judgment. When assessing the reliability of an assurance, the court will have regard to the factors contained at §§188-189 of ***Othman v UK (2012) 55 EHRR.***

93. Those criteria are: -

"188. In assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human rights situation in the receiving State excludes accepting any assurances whatsoever. However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances (***see, for instance, Ghafoor v. Russia, no. 25404/09, § 138, 21 October 2010; Sultanov v. Russia, no. 15303/09, § 73, 4 November 2010; Yuldashev v. Russia, no. 1248/09, § 85, 8 July 2010; Ismoilov and Others, cited above, §127***).

94. More usually, the Court will assess first the quality of assurances given and, second, whether, in light of the receiving State's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:

(i) whether the terms of the assurances have been disclosed to the Court **(Ryabikin v. Russia, no. 8320/04, § 119, 19 June 2008; Muminov v. Russia, no. 42502/06, § 97, 11 December 2008; see also Pelit v. Azerbaijan, cited above)**.

*(ii) whether the assurances are specific or are general and vague (**Saadi¸ cited above, Klein v. Russia, no. 24268/08, § 55, 1 April 2010; Heydarov v. Russia, no. 21055/09, § 111, 20 May 2010).***

*(iii) who has given the assurances and whether that person can bind the receiving State **(Shamayev and Others v. Georgia and Russia, no. 36378/02, § 344, ECHR 2005-III; Kordian v. Turkey (dec.), no. 6575/06, 4 July 2006; Abu Salem v. Portugal (dec.), no 26844/04, 9 May 2006; cf. Ben Khemais v. Italy, no. 246/07, § 59, ECHR 2009-… (extracts); Garayev v . Azerbaijan, no. 53688/08, § 74, 10 June 2010; Bayramov and Others v. Ukraine, no. 54131/08, § 51, 18 February 2010; Soldatenko v. Ukraine, no. 2440/07, § 73, 23 October 2008).***

*(iv) if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them (**Chahal, cited above, §§ 105-107).***

*(v) whether the assurances concern treatment which is legal or illegal in the receiving State (**Cipriani v. Italy (dec.), no. 221142/07, 30 March 2010; Youb Saoudi v. Spain (dec.), no. 22871/06, 18 September 2006; Ismaili v. Germany, no. 58128/00, 15 March 2001; Nivette v. France (dec.), no 44190/98, ECHR 2001 VII; Einhorn v . France (dec.), no 71555/01, ECHR 2001-XI; see also Suresh and Lai Sing, both cited above**)*

*(vi) whether they have been given by a Contracting **State (Chentiev and Ibragimov v. Slovakia (dec.), nos. 21022/08 and 51946/08, 14 September 2010; Gasayev v. Spain (dec.), no. 48514/06, 17 February 2009).***

(vii)the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances (Babar Ahmad and Others, cited above, §§ 107 and 108; Al-Moayad v. Germany (dec.), no. 35865/03, § 68, 20 February 2007).

*(viii) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers **(Chentiev and Ibragimov and Gasayev, both cited above; cf. Ben Khemais, § 61 and Ryabikin, § 119, both cited above; Kolesnik v. Russia, no. 26876/08, § 73, 17 June 2010; see also Agiza, Alzery and Pelit, cited above**).*

(ix) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible ***(Ben Khemais, §§ 59 and 60; Soldatenko, § 73, both cited above; Koktysh v . Ukraine, no. 43707/07, § 63, 10 December 2009).***

(x) whether the applicant has previously been ill-treated in the receiving State ***(Koktysh, § 64, cited above); and***

*(xi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State (****Gasayev; Babar Ahmad and Others¸ § 106; Al-Moayad, §§ 66-69).***

Section 87 – EA 2003 - HUMAN RIGHTS ARTICLE 5 ECHR

97. Article 5 ECHR states; -

1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority

(e) the lawful detention of people for the prevention of the spreading of infectious diseases, of people of unsound mind, alcoholics or drug addicts or vagrants

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

98. The explanatory notes on the Charter state that the rights in Article 6 have the same meaning and scope as **Article 5 ECHR**. The limitations which may be imposed on them may not exceed those permitted by the ECHR. The liberty of the subject is within the competence of the EU institutions and engages EU law ever since immigration and aspects of criminal justice have come within the jurisdiction of the European Court of Justice. Furthermore, member states may also arrest and detain people pursuant to EU law, most often in the fields of immigration and asylum and cross-border cooperation in criminal proceedings. Any domestic proceedings under the European Arrest Warrant will necessarily engage the Charter and its rights.

99. The right to liberty cannot be absolute and although most of the Article is dedicated to a list of conditions under which a person's liberty can lawfully be curtailed, each of these permissible forms of detention depends for its legitimacy on the availability of review. Therefore, there must be periodic scrutiny of the legality of detention by an independent court or tribunal. It is important to note that this list is exhaustive, i.e., there are no other permissible derogations to the right to liberty of the person.

100. The first part of Article 5 governs all situations where people are deprived of their physical liberty; this can extend from detention for less that two hours for the purpose of deportation ***(X & Y v Sweden Application No.00007376/76)*** to the holding of a patient in an open ward of a mental hospital (***Ashingdane v United Kingdom (1985) 7 EHRR 528****),* as well as the more obvious situations involving arrest for criminal offences.

101. Those parts of Article 5(1)(d) – (f) that deal with types of administration detention that do not follow a court order, makes it all the more important that the individual has a right to examine the legality of that detention under Article 5(4). Note however that the Strasbourg Court has held that Article 5(1)(f) is distinct from the other forms of detention permitted under (a) – (e) in that detention may not be "necessary" or "proportionate" to secure the deportation or extradition of someone detained in a signatory state, nor to prevent their illegal entry (***Chahal v United Kingdom (1997))***. The Court needs to retain its legitimacy in the eyes of signatory states by respecting their sovereign right to control their borders and refuse aliens the same general rights to liberty enjoyed by their citizens (***Saadi****).*

102. Be arbitrary; individuals should be "secure" from the unexplained and unlawful actions of the State: ***Bozano v France (1986) 9 EHRR 297.***

103. The right to review of detention under Article 5(4) was held not to have been breached by the UK government in having so called "closed" procedures when information about a terrorist suspect is not available either to the individual concerned or their lawyers. The special advocate performed "an important role" in counterbalancing the lack of full disclosure and the lack of an open adversarial by putting arguments on behalf of the detainee in the closed hearings. Although in the same case ***(A v United Kingdom (2009) No. 3455/05)*** the Grand Chamber found, in respect of some of the applicants, that the closed procedure could not be fair when decisive evidence was contained in the closed material that they had no chance to challenge.

Section 87 EA 2003 - Article 6 ECHR

104. The question is whether the defendant, if extradited, would be exposed to a real risk of being subjected to a flagrant denial of justice. It is for the defendant to adduce evidence capable of proving the real risk, and where such evidence is adduced, it is for the government to dispel any doubts about it. It is a very high test (***see Soering and Othman Supra***).

105. In ***Kapri v Albania [2014] HCJAC 33*** it was said where there is a high level of perception that corruption exists in the judicial system it does not necessarily mean that the removal of someone to that country would result in a violation of a Convention right.

106. The relevant threshold to establish a violation of **Article 6 ECHR** is whether the unfairness would result in a "flagrant denial of justice" (***Soering v. United Kingdom (1989) 11 EHRR 489***, at [113]).

107. The term has been considered synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein (see, among other authorities, ***Ahorugeze v Sweden (2012) 55 EHRR 2 at [114-115]***). It constitutes a breach that is so fundamental it amounts to a nullification or destruction of the very essence of the right guaranteed by Article 6 *(**Othman***).

108. That is not the same as a total or complete denial of justice (***Othman*** [281]). The fact that there might be a semblance of a "trial," or even a trial that delivers justice in most respects, does not preclude a finding of flagrant Article 6 violations in respect of those aspects in which it does not.

109. A real risk of exposure to many forms of unfairness has been held to be sufficient to meet the test (see Othman at [259]):

> *a. A trial which is summary in nature and conducted with a total disregard for the rights of the defence: see **Bader v Sweden (2008) 46 EHRR 13** at [47].*

*b. Detention without any access to an independent and impartial tribunal to have the legality the detention reviewed**: Al-Moayad v Germany (2007) 44 E.H.R.R**. SE22 at [101].*

*c. Deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country**: Al-Moayad at [101].***

*d. A prosecutor who acts in bad faith and/or is corrupt: **Dudko v Russia [2010] EWHC 1125** at [41 – 43].*

*e. Restrictions on the defence's ability to call evidence at trial: **Brown and others v Rwanda [2009] EWHC 770 (Admin**) at [66].*

*f. The absence of an independent and impartial tribunal: **Brown at [121].***

*g. The admission of any evidence obtained by torture, and potentially any evidence obtained by other forms of ill-treatment which fall short of torture: **Othman** at [267].*

110. Any assessment of the prospective (un)fairness of a trial must examine the relevant judicial system "in all the circumstances", take into account all the available evidence which touches upon that system, and consider the issue by reference to the events in other proceedings: see ***Brown*** at [121]. It is therefore an assessment to be conducted 'in the round.'

111. An unfair trial and conviction are certain where independence is lacking. In ***Kapri v the Lord Advocate representing the Govt of the Republic of Albania [2013] 1 WLR 2324***, Lord Hope observed, at [32], that:

> *"…The stark fact is that systemic corruption in a judicial system affects everyone who is subjected to it. No tribunal that operates within it can be relied upon to be independent and impartial. It is impossible to say that any individual who is returned to such a system will receive that most fundamental of all the rights provided for by article 6 of the Convention, which is the right to a fair trial…".*

112. There is "no reason in principle why a number of features, individually amounting only to a breach of art.6 rights, could not in the aggregate be found to have nullified or destroyed the very essence of the right to a fair trial": ***Popoviciu v Romania [2021] EWHC 1584 (Admin)*** at [146] per Holroyde LJ.

113. The Extradition Courts have examined the fair trial rights in relation to this very allegation in the 2013 case brought against the co-defendant. The Court found that a real risk of a flagrant denial of Article 6 existed.

114. Fair trial in relation to Ukraine has also been examined in this Court as recently as 2016. That was when Ukraine purported to comply with **Article 6 ECHR**. Given war it no longer claims

to do so, as it has derogated from **Article 6 ECHR**. The reasons Ukraine has done so, and still more any sympathy as to why, is neither here nor there so far this extradition request is concerned. The result of the derogation is that it is for the Requesting State to prove to the criminal standard that a fair trial is possible.

Section 87 – EA 2003 - HUMAN RIGHTS – Article 8 ECHR -Right to respect for private and family life-

115. Article 8 states.

> *i. Everyone has the right to respect his private and family life, his home, and his correspondence.*
>
> *ii. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health of morals or for the protection of the rights and freedoms of others.*

The law on Article 8 is well known and the principles from the key authorities do not require repetition (***Norris v United States of America [2010] UKSC 9; HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25; Celinski v Poland [2015] EWHC 1274 (Admin).***

As to ***Andrysiewicz v Poland [2025] UKSC 23*****,** in the recent case of ***Cassama v Portugal [2025] EWHC 2072 (Admin),*** Farbey J observed that the Supreme Court "did not criticise any part of the ratio [the] judgments" in Norris, HH, and Celinski…that trilogy of cases remains reflective of the correct approach" [§13].

116. The principles for the application of Article 8 in extradition cases were set out by the United Kingdom Supreme Court in ***Norris –v- Government of United States of America [2010] UKSC 9*** and subsequently refined in ***HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC***.

117. Article 8 may operate as a bar to extradition where surrender would constitute a disproportionate interference with the requested person's right to respect for private and family life. However, in the extradition context the threshold is deliberately high, reflecting the strong and enduring public interest in honouring extradition treaties and ensuring that the United Kingdom does not become a safe haven for those accused or convicted of serious criminal offences.

118. The Supreme Court in ***Andrysiewicz v Poland [2025] UKSC 23*** reaffirmed, clarified and strengthened the restrictive approach to Article 8 in extradition cases. The Court emphasised that Article 8 challenges had become routine and speculative, and confirmed that only truly exceptional cases can outweigh the public interest in extradition.

119. The proportionality exercise requires the court to balance the individual's Article 8 rights against the strong public interest in extradition. That public interest is constant and weighty and will ordinarily prevail.

120. Ordinary consequences of extradition — including separation from family members, emotional distress, disruption to employment or education, and financial hardship — will rarely, if ever, be sufficient. The interference must be shown to have an 'exceptionally severe' impact on family life before Article 8 can outweigh the public interest.

121. It is most unlikely that extradition will be found disproportionate solely by reference to private life considerations, such as length of residence in the United Kingdom, social integration, or professional ties.

122. Following ***Andrysiewicz***, courts must approach Article 8 as a secondary and residual safeguard. The seriousness of the alleged or proven offending and the United Kingdom's international obligations are to be addressed first. Only where the factual impact on family life is shown to be extreme, compelling, and exceptional will Article 8 justify refusal of extradition.

123. Recent application of the principles confirms that success under Article 8 is confined to cases involving consequences of a truly catastrophic nature, particularly for dependent children, which go well beyond the inevitable hardship associated with extradition.

Article 9 — Freedom of Religion (Extradition Context)

124. In extradition/expulsion cases, **Article 9 ECHR** is breached only where there is a "flagrant denial" of the right to freedom of religion.

125. Interferences falling short of Article 3 ill-treatment are ordinarily insufficient to bar extradition under Article 9.

126. Persecution for religious reasons, risk of death or serious ill-treatment, arbitrary detention, or a flagrantly unfair trial because of religious belief are addressed under Articles 2, 3, or 6, rather than Article 9 alone. ***See QH v Secretary of State for the Home Department [2014] UKUT 00086 (IAC) at [109]– [110]; Z & T v United Kingdom (Application No. 27034/05.***

Section 91 EA 2003 – Oppression due to ill health

127. Section 91 of the Act states:

(1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.

(2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.

(3) The judge must—

(a) Order the person's discharge, or

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

128. In ***Magiera v District Court of Kracow, Poland [2017] EWHC 2757 (Admin)***, Julian Knowles J stated what the approach should be in a case involving Article 8 ECHR and/or section 25 of Act:

> *32. Where an extradition defendant maintains that it would violate Article 8 to extradite him because of his medical condition, or that extradition is barred by s 25 for the same reason, there must be an intense focus on what that medical condition is and what it means for him in terms of his daily living, so that a proper assessment can be made of what effects upon him and his condition extradition and incarceration would have. Once that exercise has been carried out the court must assess the extent to which any adverse effects or hardship can be met by the requesting state providing medical care or other arrangements. Once that has been done, then the Court must finally make the assessment required by Article 8 and s 25 in the manner described in the authorities which I have set out above to determine whether the bar is made out. This is consistent with the approach of the Divisional Court in Dewani v. Government of South Africa [2014] EWHC 153 (Admin):*
>
> *"50. .... We must take into account all such matters, including the consequences to the requested person's state of health and age. We accept that this entails a court taking into account the question as to whether ordering extradition would make the person's condition worse and whether there are sufficient safeguards in place in the requested state."*

129. In ***XY v Netherlands [2019] EWHC 624 (Admin),*** the Appellant succeeded on section 25 and Article 8 grounds. Laing J concluded that:

> *The appellant's PTSD, depression, and very high risk of suicide were, in large measure, caused by the failure of the Dutch authorities to protect him when he was in prison in Holland. Second, if extradited, his PTSD could not be treated effectively, because he would be in the very environment which had caused his trauma. The appellant's surrender to return to that environment in which the Dutch authorities had failed to protect him could lead to complex PTSD which does not respond to treatment.*
>
> *For what it is worth, I consider that the DJ erred in equating the presumption about suicide with the considerations that arise under s.25. That much, in my judgment, is evident from the reasoning in paras.81, 84, 85 and 87 of the judgment. I consider that*

s.25 requires a wider focus and, on the unique facts of this case, that extradition would be oppressive because of the appellant's condition.

I consider that the appellant has shown that his precarious mental health is such that it would be unjust and oppressive to extradite him. This does not depend on the risk of suicide alone, and in that sense the presumption that the Dutch authorities will adequately guard against the risk of suicide is of limited relevance. It is not an answer to the appellant's argument, contrary to the reasoning of the DJ. Dr Dreyer's evidence, which the DJ accepted, shows that the appellant cannot receive effective treatment in a Dutch prison, not because the Dutch authorities cannot, in theory, provide treatment, but because such therapy would not be effective because it would be provided in the very place that had triggered the symptoms.

128. ***XY*** was followed with approval by Chamberlain J in ***ZA v Romania [2025] EWHC 595 (Admin).***

Abuse of process

127. In ***R (Bermingham) v Director of the Serious Fraud Office [2007] QB 727***, Laws LJ held (at paragraph 96) that there was a "residual" abuse of process jurisdiction under the Extradition Act 2003 ('the 2003 Act') but noted that the limits of the jurisdiction were defined by the statutory scheme. At paragraph 100, Laws LJ gave an example of a situation that might found a successful abuse argument that demonstrates the high threshold of the jurisdiction:

"The prosecutor must act in good faith. Thus, if he knew he had no real case, but was pressing the extradition request for some collateral motive and accordingly tailored the choice of documents accompanying the request, there might be a good submission of abuse of process."

128. In ***Government of the United States and Bow Street Magistrates' Court) v. Tollman [2006] EWHC 2256 (Admin)*** Phillips LCJ warned (at paragraph 84) that the judge at an extradition hearing should "be alert to the possibility of allegations of abuse of process being made by way of delaying tactics" and then set out the procedure that the court should follow where an abuse of process was alleged:

(a) The conduct alleged to constitute the abuse must be identified with particularity

(b) The judge must then consider whether conduct, if established, is capable of amounting to an abuse of process

(c) If it is, he must next consider whether there are reasonable grounds for believing that such conduct may have occurred

(d) If there are, then the judge should not accede to the request for extradition unless he has satisfied himself that such abuse has not occurred.

129. In ***Symeou v. Public Prosecutor's Office at the Court of Appeals, Patras, Greece [2009] EWHC 897 (Admin)*** the Divisional Court emphasised the limits of the abuse jurisdiction (at para. 33):

> *"[…] The focus of this implied jurisdiction is the abuse of the requested state's duty to extradite those who are properly requested, and who are unable to raise any of the statutory bars to extradition. The residual abuse jurisdiction identified in Bermingham and Tollman concerns abuse of the extradition process by the prosecuting authority. We emphasise those latter two words. That is the language of those cases. It is the good faith of the requesting authorities which is at issue because it is their request coupled with their perverted intent and purpose which constitutes the abuse. If the authorities of the requesting state seek the extradition of someone for a collateral purpose, or when they know that the trial cannot succeed, they abuse the extradition processes of the requested state."*

130. In ***Belbin v. Regional Court of Lille, France [2015] EWHC 149 (Admin),*** the Divisional Court (Aikens LJ and Edis J) stated that there will only be an abuse of the extradition process if the statutory regime in the Extradition Act is being usurped and that this would result in extradition being unfair and unjust. At paragraph 44, Aikens LJ stated:

> *"[I]t will only amount to an abuse of the extradition process if the statutory regime in the EA is being "usurped" (see [97] of Bermingham). It would, for example, be "usurped" by bad faith on the part of the Judicial Authority in the extradition proceedings or a deliberate manipulation of the extradition process. But any issues relating to the internal procedure of the requesting state are outside the implied abuse of process jurisdiction concerning extradition proceedings: see [36] of Symeou. Moreover, as is clear from the decision of this court in Federal Public Prosecutor, Brussels, **Belgium v Bartlett** [2012] EWHC 2480 (Admin), this "usurpation" of the statutory extradition regime must result in the extradition being "unfair" and "unjust" to the requested person. In this regard it has also to be shown that, because of the "usurpation" of the statutory regime, the requested person will be unfairly prejudiced in his subsequent challenge to extradition in this country or unfairly prejudiced in the proceedings in the requesting country if surrendered there."*

Summary of the Evidence

131. In considering the evidence before the court, I have had the benefit of detailed expert reports addressing the religious, legal, political, medical, and custodial context relevant to the proceedings. The following narrative summarises the salient points of those reports and the oral testimony given to the court.

132. I am very grateful to defence team for providing what effectively amounts to transcripts of the oral testimony, in preparing the below summary I have cross referenced those transcripts with my notes and sought to fairly summarise the evidence, if I have not included specific

answer or piece of evidence or have included something that the parties do not wish to rely upon it does not mean I have not considered the whole of the evidence. The analysis of the evidence is within my findings.

Collen Rohan:

Colleen M. Rohan is an international criminal defence lawyer, she evaluated the risk to Mr Dmytruk's fair trial rights in Ukraine in her written report(S). Ms Rohan notes that Ukraine has derogated from Article 6 of the European Convention on Human Rights ("ECHR") due to martial law, thereby undermining the guarantees of a fair trial. She highlighted credible reports of judicial bias, corruption, and political interference in high-profile cases, particularly those involving allegations of collaboration or opposition to the government. Ms Rohan observed that the Ukrainian legal system permits extended pre-trial detention, limited access to defence counsel, and the use of evidence obtained without proper safeguards. She further cited documented cases of torture, inhuman treatment, and poor prison conditions, including in facilities where Mr Dmytruk would likely be held. Ms Rohan concluded that there are substantial grounds for believing that Mr Dmytruk would face a real risk of flagrant denial of justice and ill-treatment if extradited.

Summary of her oral testimony

Ms Rohan is a criminal defence lawyer with approximately 45 years' experience. She confirmed that she prepared three expert reports, dated 11 June 2025, 18 June 2025, and an addendum dated 11 October 2025, as summarized above, all of which she adopted as her evidence.

Her expertise derives from long-standing engagement with the Ukrainian criminal justice system, including co-authoring a defence counsel handbook and developing training programmes for Ukrainian defence lawyers dealing with war crimes cases.

She described surveys and structured consultations involving more than 300 defence lawyers, as well as engagement with judges and prosecutors, aimed at identifying practical obstacles faced by defence lawyers in politically sensitive cases.

Ms Rohan outlined issues including pressure on defence lawyers, hostility toward defendants perceived as enemies of the state, media influence, and limitations on effective defence in high-profile cases.

She explained that her analysis focused not on the technical nature of the charges against Mr Dmytruk, but on how he would be perceived by the authorities, judiciary, and public, given his political stance and public profile.

She stated that, in her opinion, these factors raised concerns about Mr Dmytruk's ability to receive a fair trial if returned to Ukraine.

Cross Examination:

In cross-examination, Ms Rohan accepted that the empirical material underpinning her opinions was derived primarily from surveys and structured engagement with defence lawyers, rather than prosecutors or judges. She explained that this reflected the purpose of the programme under which the work was conducted, though she accepted that this necessarily represented one professional perspective.

She accepted that her survey work was not offence-specific and did not focus on minor or routine criminal cases as such. She acknowledged that the offences alleged against Mr Dmytruk were not war crimes and that her experience was drawn largely from cases involving more serious allegations or heightened political sensitivity.

Ms Rohan accepted that her analysis involved extrapolation from broader patterns observed within the Ukrainian criminal justice system rather than direct knowledge of how this particular case would be handled. She acknowledged that she could not give evidence of the conduct of any individual judge, prosecutor, or court in Mr Dmytruk's case.

She nevertheless maintained that, in her view, the relevance of her evidence lay in the likely perception of Mr Dmytruk by state institutions and the public, given his political profile, rather than the technical classification of the charges. She accepted that this involved an assessment of risk rather than certainty.

Professor William Bowring

Professor William Bowring, an expert in international law and human rights, examined the political motivation behind the charges against Mr Dmytruk in written reports. Professor Bowring described the Ukrainian justice system as being vulnerable to political interference, especially in cases involving opposition politicians or those associated with the UOC. He noted that the timing and nature of the charges against Mr Dmytruk suggest they are politically motivated, linked to his opposition to the ban on the UOC and his public criticism of the government. Professor Bowring concluded that there is a high risk that Mr Dmytruk will not receive a fair trial and would be subject to further prosecution or punishment on account of his political and religious views.

Summary of his oral testimony

Professor Bowring is a legal academic and human rights practitioner with decades of experience concerning Ukrainian and Russian law, including work with human rights organisations, international bodies, and governmental institutions.

He confirmed his report dated 13 July 2025 and stated that subsequent responses from the requesting state did not alter his opinions.

His evidence addressed the procedural history of the case in Ukraine, including decisions of the Pecherskyi District Court and the notification of Mr Dmytruk as a suspect.

Professor Bowring described concerns about the reputation and independence of the Pecherskyi District Court, referring to investigative journalism and commentary highlighting alleged links between courts and law enforcement bodies.

He expressed broader concerns regarding judicial independence, political influence, and institutional pressures within the Ukrainian legal system, particularly in cases with political or national security dimensions.

Cross Examination:

In cross-examination, Professor Bowring accepted that aspects of his evidence concerning the Pecherskyi District Court and the Ukrainian judiciary more generally were based on secondary sources, including investigative journalism and commentary, rather than personal involvement in the specific proceedings against Mr Dmytruk.

He acknowledged that he had no direct role in, or firsthand knowledge of, the investigation or court decisions in Mr Dmytruk's case. He accepted that judicial systems are not homogeneous and that not every judge or court would necessarily be affected by the concerns he described.

Professor Bowring accepted that his evidence addressed systemic issues rather than individual conduct, and that he could not say how any particular judge would approach the case. He maintained, however, that the sources he relied upon were relevant to an assessment of structural risk and institutional context.

Professor Nadieszda Kizenko

Professor Nadieszda Kizenko, a historian specialising in Orthodox Christianity in Ukraine and Russia, provided further historical and legal context. In her written report she explained that the UOC was, until 2018–19, the only canonical Orthodox Church in Ukraine, and that the Orthodox Church of Ukraine ("OCU") was created with state support in response to political developments. Professor Kizenko analysed the impact of Law 3894, which, she observed, imposes vague and impossible conditions for the UOC to prove its independence from the Russian Orthodox Church. She documented extensive evidence of discrimination against the UOC, including property seizures, exclusion from public life, and the prosecution of clergy. Professor Kizenko concluded that the UOC is targeted for political reasons and that its members, including Mr Dmytruk, are at risk of religious persecution and the denial of fundamental rights.

Summary of her oral testimony

Professor Kizenko provided expert evidence on the religious and cultural landscape in Ukraine, with particular reference to Orthodox Christianity and its intersection with politics and national identity.

She explained the historical and contemporary tensions between different Orthodox churches, including the Ukrainian Orthodox Church, the Orthodox Church of Ukraine, and associations with Russian religious institutions.

Her evidence addressed how religious affiliation or perceived alignment may be interpreted politically in the current climate, especially during the ongoing conflict.

She outlined how individuals associated with certain religious positions may be subject to suspicion, hostility, or adverse attention from authorities.

Cross Examination:

In cross-examination, Professor Kizenko accepted that religious affiliation alone does not automatically lead to adverse treatment by the Ukrainian authorities. She acknowledged that many individuals practise their religion without interference.

She accepted that she did not have personal knowledge of Mr Dmytruk's interactions with religious institutions or of any actions taken against him specifically because of religious association. She also accepted that the impact of religious affiliation depends on context, visibility, and the prevailing political climate.

Professor Kizenko accepted that her evidence was directed to explaining cultural and political sensitivities and risk factors rather than predicting inevitable outcomes in any individual case.

Professor Jason Payne-James

Professor Payne-James, a highly experienced forensic physician, was instructed to assess the reliability of Dr Juliet Cohen's conclusions regarding injuries sustained by Artem Dmytruk, particularly those attributed to eye gouging, restraint, and other forms of physical and psychological harm. His report draws on photographic evidence, video footage, and Mr Dmytruk's own account of events.

The photographs and Mr Dmytruk's account describe a severe beating, including blunt force trauma to the face, head, and body, cable tie marks on the wrists, abrasions to the knees, and injuries consistent with restraint. The facial injuries, especially around the right eye, are consistent with direct blunt force impact (such as a punch or kick), though eye gouging cannot be excluded. The marks on the wrists are highly consistent with ligature restraint, but it is not possible to confirm they were caused specifically by cable ties.

The injuries and symptoms described—concussion, broken nose, jaw dysfunction, cracked teeth, pain, and psychological trauma—are typical of the torture and ill-treatment alleged by Mr Dmytruk. The physical findings are clinically plausible and consistent with his account, though the absence of dated medical records limits definitive conclusions.

Some joint and spinal findings could also be attributed to previous sports or weightlifting injuries, but the overall pattern of injuries supports the account of a severe beating.

The photographs show signs of severe beating and restraint but lack date and identification details. Video footage of Mr Dmytruk's assistant, showing similar injuries, provides some corroboration. The absence of visible injuries in a video of Mr Dmytruk taken 12–13 days after the alleged assault is surprising but not impossible, as some injuries may heal rapidly.

The right eye injury is consistent with blunt force trauma; eye gouging is possible but not certain.

The force required for the injuries is at least moderate.

Lasting eye damage is variable and depends on multiple factors.

The injuries to the knees and wrists are consistent with restraint and direct impacts.

The injuries are consistent with Mr Dmytruk's account of torture and ill-treatment.

Mr Dmytruk exhibits symptoms of PTSD and moderately severe depression, which are linked to the described ill-treatment.

Professor Payne-James recommends further specialist evaluation and psychological therapy for Mr Dmytruk's ongoing symptoms.

Professor Payne-James broadly agrees with Dr Cohen's interpretation of the injuries as consistent with torture and ill-treatment, though he notes limitations due to the lack of dated medical records and the possibility of alternative causes for some findings. The overall evaluation supports the account of severe physical and psychological harm suffered by Mr Dmytruk in March 2022.

Summary of his oral testimony

Professor Payne-James gave expert forensic medical evidence concerning injuries said to have been sustained by Mr Dmytruk.

He reviewed photographs and other material and addressed the nature, appearance, and possible causes of the injuries depicted.

He discussed the extent to which injuries could be consistent with assault or restraint, as well as alternative explanations, including accidental or sporting causes.

Professor Payne-James emphasised the limitations of retrospective assessment, particularly where injuries were examined long after the alleged events and where dating of photographs was uncertain.

Cross Examination:

In cross-examination, Professor Payne-James accepted that many of the injuries shown in the photographic material could have alternative explanations, including accidental injury or sporting activity.

He accepted that he was unable to date the injuries shown in the photographs and that the absence of contemporaneous medical records limited the conclusions that could be drawn. He accepted that photographs alone cannot establish when or in what circumstances injuries were sustained.

Professor Payne-James accepted that injuries to both wrists were consistent with some form of restraint but acknowledged that it was not possible to identify the precise method or circumstances of restraint from the images alone.

He emphasised the inherent limitations of retrospective forensic assessment, particularly where the available material is incomplete.

Dr Juliet Cohen

Dr Juliet Cohen, a forensic physician specialising in the documentation of torture, provided a medical report based on her examination of Mr Dmytruk and a review of photographic and video evidence. Dr Cohen confirmed that Mr Dmytruk's injuries were consistent with severe physical assault and torture, including concussion, a broken nose, jaw dysfunction, and psychological trauma manifesting as post-traumatic stress disorder and depression. Dr Cohen found that Mr Dmytruk's ongoing symptoms included chronic pain, sleep disturbance, nightmares, and severe anxiety. She concluded that the findings were consistent with Mr Dmytruk's account of abduction and torture by Ukrainian security services and recommended ongoing psychological support and specialist care.

Summary of her oral testimony

Dr Cohen is a medical practitioner with extensive experience in the assessment and documentation of torture and ill-treatment, including work in accordance with the Istanbul Protocol.

She interviewed and physically examined Mr Dmytruk on 15 January 2025 and adopted her report dated 5 February 2025 as evidence.

Dr Cohen diagnosed post-traumatic stress disorder and moderately severe depression, based on clinical interview, symptom history, physical examination, and review of photographic and video material.

She described multiple injuries, including to the wrists and face, which she assessed as consistent with severe beating and restraint.

While precise dating the injuries was not possible, the overall pattern of findings was, in her opinion, typical of torture or ill-treatment.

In cross-examination, Dr Cohen addressed differing expert opinions, acknowledged the limitations of retrospective diagnosis, and explained that PTSD symptoms may fluctuate and diminish over time while still having been present previously.

Cross Examination:

In cross-examination, Dr Cohen accepted that her assessment was retrospective and that the passage of time limited the precision with which physical injuries and psychological symptoms could be dated.

She accepted that the photographic material she relied upon was provided to her without independent verification of metadata, and that she did not know who took the photographs or the precise circumstances in which they were taken, beyond what she was told by Mr Dmytruk.

Dr Cohen accepted that some physical findings described as "consistent with" torture or ill-treatment could also arise in other ways, in accordance with the Istanbul Protocol terminology.

She accepted that Dr Hartley, who assessed Mr Dmytruk at a later stage, did not diagnose a current depressive disorder and assessed PTSD symptoms as sub-threshold at that time. She accepted that PTSD symptoms may fluctuate and diminish over time, and that her diagnosis related to the period she assessed.

Mr Artem Dmytruk

Mr Artem Dmytruk ("AD") is a sitting Member of the Verkhovna Rada, elected in 2019. He states that he was originally part of the President's party, Servant of the People, but was expelled in 2021 after disagreements with senior figures, including the President. He says that from that point onwards he was viewed with suspicion by elements of the executive and security structures, and that his political independence, combined with his religious identity and public messaging, placed him in a uniquely vulnerable position. He describes himself as a prominent and outspoken critic of government policy, particularly in relation to civil liberties, religious regulation, and the conduct of the war. He says he is also a sub-deacon of the Ukrainian Orthodox Church ("UOC") and one of

the few national politicians who continued publicly to defend that Church after February 2022. He has an extensive online following—he claims some six million subscribers across platforms, generating around 50 million monthly views—and says that his public profile served both as a shield, until 2022, and then as a reason for intensified targeting by the authorities.

March 2022: Arrest, Torture, and Immediate Aftermath

AD's core narrative arises from events on 4–5 March 2022. He states that he was travelling in the Odesa region, distributing humanitarian aid in a van bearing his photograph and name, accompanied by his assistants, Mihu and Marzak. According to AD, the group was stopped by officers of the Security Service of Ukraine ("SBU"). He says that an altercation unfolded in which a firearm was taken from an officer; AD denies assaulting any officer and asserts that the incident was staged to create a pretext for neutralising him as a political opponent. He says he protested his parliamentary status but was immediately overpowered and detained.

AD states that he was restrained with tight cable ties behind his back, forced to the ground, and then hooded with a taped bag. He recalls being beaten repeatedly—punched, kicked, stamped on, and struck with a rifle butt—across his head, face, ribs, legs and back. He describes a prolonged attack in which, at one stage, one or more officer's applied pressure to his right eye in a manner he describes as "gouging," producing intense pain and temporary loss of vision. He recounts losing consciousness at least once during this period.

He says he was then moved to another location, believed to be an SBU facility. There, while still hooded and restrained, he was further assaulted, threatened with death, and subjected to mock executions: he describes being taken to a rooftop and told he would be thrown off; he also describes being placed against a wall and told he would be shot. He says threats of sexual violence were made. AD states that officers forced him to record videos—some denying torture, others making incriminating confessions—and that, during his detention, his Telegram post from 4 March was deleted by officers from his phone.

AD says he was released on 5 March 2022. He made his way to a safe location where photographs of his injuries were taken. He describes substantial swelling and bruising to both eyes, worse on the right, impaired vision, swelling of the nose which he believes represented a fracture, abrasions to the knees consistent with being forced to kneel, bruising to the thighs and lower back, and linear marks on the wrists which he attributes to cable-tie restraint. He describes dental injury, including chipped or broken teeth, and persistent headaches. He also produced images he says depict corresponding injuries to Mihu, including significant bruising to the eye and posterior thighs.

AD accepts that original photographic files and metadata are no longer available, stating that phones were destroyed or replaced for security reasons and that images were exchanged through Telegram, leaving only screenshots. He says that the absence of contemporaneous medical records is explained by explicit threats from SBU officers that he and his family would be killed if he reported the torture or sought treatment. He says he did later undergo dental treatment and some medical procedures but declines to identify clinicians for fear of placing them at risk.

He states that he suffered significant psychological effects following the incident, including nightmares, intrusive flashbacks, hyper-arousal, avoidance behaviour, and sensations triggered by the smell of cigarette smoke or hessian cloth reminiscent of the hood placed on him. He says he also developed chronic back pain, sleep disturbance, and reduced concentration.

October 2023 Allegation

AD faces a further allegation arising from an October 2023 incident outside parliament. He denies the allegation and says that it was fabricated or opportunistically pursued to exert political leverage over him, especially as debates on religious legislation intensified. He states that this was part of a wider pattern in which minor incidents were used to generate criminal pressure against inconvenient MPs.

Events of 2024: Opposition to Law 3894 and Escalation of Threats

AD identifies mid-2024 as the period in which, he says, political hostility to him intensified dramatically. From 17 July 2024, he began posting publicly against what would become Law 3894, legislation concerning religious organisations which he and others perceived as targeting the UOC. He states that he was the only MP to speak from the parliamentary podium on 20 August 2024 in opposition to the bill, delivering what he describes as a “fiery” address.

AD says that following this speech, the atmosphere around him changed rapidly: threats multiplied, including, he says, from a former MP allegedly offering a substantial bounty for his killing. He says he approached officials but received no protection. On 24 August 2024, fearing imminent harm, he left Ukraine. He states that he did so legally and without the intention of evading justice.

On 25 August 2024, the day after he departed, the Ukrainian authorities issued a notice of suspicion concerning the 2022 and 2023 matters. That same day, President Zelenskyy famously made a public statement referring to “traitors who fled,” which AD states was universally understood to refer to him in light of the timing and public attention. He says the sequence—speech on 20 August, departure on 24 August, presidential remarks on 25 August, and the Prosecutor General’s approval on 29 August 2024 of an application for his preventive detention—demonstrates that the authorities revived and escalated

matters in retaliation for his political speech, not because of any genuine criminal concern.

AD says that in June 2025, he was placed under formal sanctions within Ukraine, including restrictions preventing him from posting or disseminating content within the country. He says these sanctions labelled him effectively as a collaborator or traitor and further entrenched his portrayal as an enemy of the state. He states that the sanctions made his return impossible without grave danger.

Religious Dimension and Perceived Targeting

AD places significant emphasis on the religious context, stating that the UOC and its clergy have, since 2022, been the subject of state suspicion and adverse public rhetoric due to perceived links with the Russian Orthodox Church. He says that because he publicly defended the UOC—and, in his words, was unique among MPs in doing so with visibility and force—he came to be seen as a defender of an institution the state viewed as disloyal. He says this religious identity and advocacy placed him at additional risk and contributed to the portrayal of him as "pro-Russian," even though he states he condemned the invasion early and often.

Extradition Proceedings: His Position on Risk and Fair Trial

AD's case is that, if returned to Ukraine, he would face: A real risk of renewed torture, given his past experience and the bodies involved.

A real risk of assassination, either by state actors or by nationalist non-state actors, particularly in the current wartime climate.

A flagrant denial of a fair trial, because he has been publicly branded a traitor; because political rhetoric from the President and senior officials has condemned him; because the judiciary, he says, is susceptible to political pressure; and because, in practice, no judge would feel able to acquit a figure who has been subject to presidential denunciation.

He states that pre-trial detention would be particularly dangerous because of the risk of abuse by security personnel and the likelihood of his being held in isolated or heightened-security conditions.

He further states that, although the present extradition request relates only to comparatively minor public-order allegations, the "true intention" of the Ukrainian authorities is to secure his return and subsequently pursue more serious charges—such as collaboration or treason—which they cannot presently add due to the specialty rule.

In cross-examination, AD accepted that:

There are no original injury photographs or metadata.

There are no contemporaneous medical records, either from March 2022 or from any subsequent hospital visit.

His public criticism of the President continued even after the alleged torture.

The criminal investigations into the 2022 and 2023 incidents pre-dated his August 2024 speech.

However, he maintained that:

The sequence of events, particularly between 20 and 29 August 2024, could only be understood as political retaliation.

He lacked medical evidence solely because he had been threatened with death if he sought help.

A video dated 17 March 2022, which appeared to show him with little or no visible bruising 12 days after the alleged assault, was of poor quality, poorly lit, and not representative of reality.

His religious and political identity make him uniquely vulnerable, such that the experience of other MPs who voted against Law 3894 is not comparable.

Reverend Dr Timothy Carroll

Rev Dr Timothy A. Boniface Carroll, an anthropologist and Orthodox priest, provided a comprehensive account of the religious landscape in Ukraine, with particular reference to the Ukrainian Orthodox Church ("UOC"). Dr Carroll explained that, although the UOC declared its independence from the Moscow Patriarchate in May 2022, the Ukrainian state continues to treat it as a Russian-affiliated institution. Dr Carroll described the passage and enforcement of Law 3894, which, in his view, is designed to ban the UOC and has resulted in systematic discrimination, the seizure of church property, and the prosecution of clergy and adherents. He further noted that international religious and human rights bodies have condemned Law 3894 as incompatible with international standards of religious freedom. Dr Carroll concluded that the prosecution of Mr Dmytruk is likely motivated by his religious affiliation and his public opposition to the ban on the UOC, and that extradition would expose him to religious persecution and a denial of a fair trial.

Summary of his oral testimony

Dr Carroll gave expert evidence concerning prison and detention conditions in Ukraine.

He addressed physical conditions, monitoring regimes, and the impact of the ongoing conflict on detainee safety.

His evidence included discussion of air raid shelters, missile strike risks, and systemic pressures on detention infrastructure.

He expressed concerns regarding potential risks under Articles 2 and 3 of the European Convention on Human Rights, particularly for detainees with a high public or political profile.

Cross Examination:

In cross-examination, Dr Carroll accepted that detention conditions vary between facilities and regions in Ukraine.

He accepted that some of the risks he identified related to infrastructure limitations and the broader security situation rather than deliberate mistreatment by authorities.

He accepted that he did not have specific statistical data concerning missile strike frequency in particular locations relevant to Mr Dmytruk, and that his evidence addressed general risk arising from the ongoing conflict.

Dr Matthew Hartley

Dr Matthew Hartley was instructed by the Crown Prosecution Service to assess the mental health of Artem Dmytruk, specifically to evaluate the reliability of previous psychiatric findings, the presence and impact of post-traumatic stress disorder (PTSD), and the potential effects of extradition on his mental health. The assessment was based on a direct interview, mental state examination, and review of relevant documents and reports, including Dr Juliet Cohen's earlier findings.

Mr Dmytruk is a 32-year-old former Ukrainian MP, known for his independent views and outspoken defence of the Ukrainian Orthodox Church. He alleges that he was targeted by Ukrainian authorities for his political and religious activities and claims to have been tortured by the Ukrainian Secret Service (SBU) in March 2022.

Mr Dmytruk described being beaten, threatened with rape and execution, and forced to make a false confession. He reported ongoing threats to his safety and that of his family, both in Ukraine and the UK. He did not seek medical attention after the alleged torture, citing concerns for his safety.

Prior to the alleged trauma, Mr Dmytruk reported no psychiatric history. Following the incident, he experienced nightmares, panic attacks, heightened anxiety, and avoidance behaviours. Over time, these symptoms have reduced in severity and frequency. He

maintains a high level of functioning, is active in work and social media, and demonstrates psychological resilience.

At the time of assessment, Mr Dmytruk did not meet the diagnostic threshold for PTSD. He exhibited residual symptoms (mainly nightmares and anxiety), but no evidence of depression, suicidal ideation, or significant impairment in daily functioning. His mood was described as excellent, and he appeared motivated and future oriented.

Dr Hartley found no criticism of Dr Cohen's methodology but noted differences in conclusions, likely due to the seven-month gap between assessments. While Dr Cohen diagnosed PTSD and moderately severe depression, Dr Hartley found only sub-threshold symptoms of PTSD and no current depressive disorder.

The diagnosis of PTSD can support claims of past trauma, but in this case, confidence is low due to the lack of corroborative medical evidence and the absence of relevant mental state features at the time of assessment. There was no clear evidence of misunderstanding, though some exaggeration of symptoms was possible.

Extradition could negatively affect Mr Dmytruk's mental health, especially if he faces further threats or ill-treatment, potentially leading to a relapse of PTSD symptoms. However, his psychological resilience and support network mitigate this risk. There is no evidence of significant risk of self-harm or suicide.

No psychiatric or psychological treatment is currently indicated. Mr Dmytruk prefers to manage his well-being through fitness and prayer rather than medical intervention.

Dr Hartley concludes that while Mr Dmytruk's history is consistent with PTSD following the alleged trauma, his current symptoms are sub-threshold and do not warrant a formal diagnosis or treatment. The overall picture is one of psychological resilience, with no evidence of significant mental disorder at present. The impact of extradition would depend on future circumstances, particularly the risk of further trauma or separation from his support network.

Summary of his oral testimony

Dr Hartley provided psychiatric evidence following an assessment of Mr Dmytruk conducted several months after Dr Cohen's examination.

He identified residual psychological symptoms but did not diagnose a current depressive disorder at the time of his assessment.

Dr Hartley assessed symptoms of post-traumatic stress as sub-threshold at that later stage and noted a relatively high level of functioning.

His evidence addressed resilience, coping mechanisms, and factors that might influence Mr Dmytruk's mental health if extradited.

Cross Examination:

In cross-examination, Dr Hartley accepted that his assessment represented a snapshot in time and was conducted several months after the events described by Mr Dmytruk.

He accepted that psychological symptoms may have been more pronounced earlier and may have been diminished by the time of his examination.

Dr Hartley accepted that his conclusions differed from those of Dr Cohen and stated that this reflected differences in timing and methodology rather than error.

Mr George Tugushi

George Tugushi, an international expert on torture prevention and prison conditions, former member of the CPT, assessed the likely conditions of detention should Mr Dmytruk be extradited. Mr Tugushi described Ukrainian prisons, including those in the western regions where Mr Dmytruk would likely be held, as overcrowded, under-resourced, and failing to meet European standards. He identified persistent problems with violence, poor sanitation, inadequate medical care, and a lack of protection from air raids. Mr Tugushi concluded that the risk of ill-treatment, including solitary confinement and lack of access to necessary medical and psychological care, is high. He opined that extradition would expose Mr Dmytruk to a real risk of inhuman or degrading treatment, in breach of Article 3 of the ECHR.

Summary of his oral testimony

Mr Tugushi gave evidence regarding detention facilities, security arrangements, and civil defence conditions in Ukraine.

He addressed the adequacy of shelters, infrastructure limitations, and risks arising from ongoing missile attacks.

Mr Tugushi stated that no part of Ukraine could be considered entirely safe due to the conflict.

He expressed particular concern for individuals with a heightened profile, noting that increased security measures such as isolation or enhanced monitoring could themselves have adverse effects.

In cross-examination, Mr Tugushi accepted that he did not have precise data concerning missile strike frequency in specific regions.

He accepted that some of the issues identified regarding shelters related to compliance with standards rather than immediate structural danger.

He accepted that enhanced security measures for high-profile detainees could have both protective and adverse effects.

Competing Submissions

133. The RS highlights the timing and service issues pertaining to defence evidence. It records that defence materials directed for service by 27 May 2025 were not served on time; addendum bundles were supplied on 17 October, 8 December, and 29 December 2025, and an additional expert report on 16 December 2025, which the RS says curtailed its ability to test provenance and authenticity (e.g., of Telegram images and CCTV). The RS invites the court to treat such evidence with reduced weight and characterises certain 'transcripts' as unilateral notes.

134. The RP does not advance a standalone procedural allegation in response within the materials but relies substantively on the late-served materials as part of his case on torture, political motivation, and risk.

Political Motivation (Section 81(a))

135. The RP alleges the prosecution is politically motivated, arising from his opposition to President Zelenskyy, his perceived pro-Russian stance, and his criticism of legislation concerning the Ukrainian Orthodox Church (UOC). He points to the chronology (alleged offences in March 2022; notice of suspicion on 25 August 2024), public denunciations of 'traitors', sanctions imposed in June 2025, and expert opinion (including assessments by academic and regional experts) to argue that charging decisions aligned with his speech of 20 August 2024 and religious affiliation. He further relies on broader patterns of state hostility toward the UOC to suggest the case is part of a wider campaign.

136. The RS maintains there is a non-political explanation for the chronology: an arrest warrant issued after the RP left Ukraine, initiating extradition steps. It says investigations pre-dated both the parliamentary debate and the RP's ordination, that other MPs who opposed the law were not prosecuted, and that assurances from the Prosecutor General deny any political or religious basis to the charges. The RS cites concessions said to have been made in cross-examination (e.g., that investigations were already ongoing) and stresses that sanctions in 2025 were imposed by a different body for later conduct, and therefore cannot have motivated earlier prosecutorial steps.

Animus Alleged by Senior Officials

137. The RP alleges animus from senior figures, including the President and the Head of the Presidential Office, interpreting public statements as signalling hostility toward him and those perceived as sympathetic to Moscow or the UOC.

138. The RS characterises the cited statements as general condemnations of collaborators and threats of violence, noting the RP is not named and religion is not mentioned in the President's speech. It contends the social-media post relied upon discourages threats and violence and argues that the RP's interpretation is erroneous. The RS also questions the expertise and foundations of certain expert commentary on this point.

Sanctions as Evidence of Persecution

139. The RP treats the imposition of sanctions as reinforcing a political and religiously-tinged pursuit by the state.

140. RS states the RP was one among many sanctions for 2025 conduct while in England, including media appearances and posts alleged to incite obstruction of the military; sanctions followed a prescribed procedure and were imposed by a body distinct from the prosecuting authorities. On that basis, the RS says sanctions cannot evidence political motivation for an earlier prosecution.

March 2022 Torture and Ill-Treatment Allegations

141. The RP alleges unlawful detention and torture by SBU officers on 4–5 March 2022, describing assaults including eye-gouging, suffocation, burning, and threats. He relies on his oral testimony; photographs said to depict injuries; expert medical opinion indicating injuries consistent with assault and restraint; contemporaneous images and CCTV relating to associates; and patterns in his social-media activity. He also points to the absence of state records (custody logs, medical notes, or CCTV) and to reliance by domestic courts on statements allegedly obtained under duress.

142. The RS challenges the provenance and timing of the photographic and video material, noting the absence of original images with metadata, late service, and changing explanations about source and storage. It highlights the lack of producing statements and says the defence's timing impeded forensic testing. It also characterises aspects of the RP's account (e.g., taking photographs despite alleged threats and surveillance; uncertainties regarding devices and accounts; unexplained provision of CCTV) as internally inconsistent.

143. The RS relies on a 17 March 2022 social-media video (no apparent residual facial injury) and expert opinion that injuries of the severity depicted would be expected to display residual signs beyond 12 days. It notes the absence of dental records, x-rays, or corroborative witness statements (from family, staff, or associates) despite the RP's claims of chipped teeth and spinal deformity, and argues these omissions are significant when assessing the narrative. The RS further points to exculpatory content in a co-witness's statement and the asserted inadmissibility of SBU-obtained witness testimony at trial.

Alleged Failure to Investigate Torture

144. The RP claims the Ukrainian authorities failed to investigate his torture allegations, citing the absence of detention documentation, medical records, or CCTV, and what he says are inconsistencies in the further information provided by Ukraine. Expert evidence is invoked to describe systemic investigation shortcomings.

145. The RS does not accept a failure to investigate is established on the materials before the Court. It emphasises the lack of authenticated underlying material from the defence to trigger or structure any such inquiry, and notes the passage of time, the lack of contemporaneous formal complaints about mistreatment, and the distinct roles of agencies who would now be responsible for any further steps.

Risk of Future Ill-Treatment if Extradited (Article 3)

146. The RP says prior mistreatment by a state security agency, continued SBU involvement, sanctions, and country material on detention-related ill-treatment together demonstrates a real risk of recurrence. He also references hostility toward perceived collaborators and threats from non-state actors, coupled with an alleged past refusal of protection.

147. The RS contends the SBU will not interrogate or detain the RP on return and is not the prosecuting authority; detention (if any) would be in ordinary prison facilities under judicial control. It relies on formal assurances against torture and inhuman treatment, and stresses changes in institutional responsibility since early 2023, as well as the availability of judicial remedies and monitoring.

Detention Conditions and Risk from Armed Conflict (Articles 2 and 3)

148. The RP argues that no region of Ukraine can be considered safe given continuing missile and drone attacks and expresses concern that prison shelters and court facilities would not provide adequate protection. He also relies on monitoring-body reports addressing conditions and risks in detention.

149. The RS proposes detention and (if required) trial arrangements in Western Ukraine, away from active hostilities, noting that designated prisons have not been struck ,the evidence of airstrikes in the region is limited to sporadic at best, that air-alert and shelter infrastructure exists with priority access for extradited detainees, and that remote court attendance is possible. It cites inspections and monitoring (including capacity, daily routine, medical access, and generator availability), while acknowledging some shortcomings (e.g., lighting or water). Its further points to international reporting that, on the RS's case, does not demonstrate a real risk of inhuman treatment in the specific facilities envisaged.

Fair-Trial Risk (Articles 5 & 6) and Martial Law

150. The RP contends there is a real risk of prejudice at trial due to judicial corruption, political pressure, and the broader wartime context, including the operation of martial-law provisions said to affect procedural safeguards. He points to public statements by senior officials as

compromising the presumption of innocence and relies on expert commentary critiquing institutional independence.

151. The RS submits that pre-trial steps to date have been conducted with judicial oversight, that judges were randomly allocated, and that appellate review has occurred. It highlights constitutional guarantees, international oversight (including potential trial observation), and avenues for recusal and complaint. On martial law, the RS argues the relevant emergency provisions are engaged only where ordinary law cannot operate and are not applicable to the RP's case, particularly if proceedings are conducted in Western Ukraine. The RS also references comparative extradition practice across Europe and provides assurances directed to fair rights.

152. As part of the context of the March 2022 events, the RP asserts that senior officials sought to silence or punish him for his political and religious positions, including by directing attempts on his life and arranging his abduction and torture by the SBU.

153. The RS characterises the assassination claims as inherently implausible, points to their absence from earlier written accounts, and argues that the RP's subsequent public activity undermines the stated purpose of silencing him. It also highlights asserted inconsistencies on the account of the intended use of any videoed 'confession' and the lack of collateral documentary or witness corroboration.

Article 9 (Freedom of Religion)

154. The RP submits that Law 3894/8371 effectively bans or targets the Ukrainian Orthodox Church (UOC) and results in discrimination, harassment, and practical impediments to worship; as a UOC sub-deacon and advocate, the RP faces interference with manifestation of religion on return.

155. He relies on derogatory public rhetoric (including from senior officials) and state actions against the UOC show state-motivated religious persecution; extradition would entail a real risk of interference with Article 9 rights.

156. He submits therefore, extradition is barred under s.87 ECA 2003 (Article 9) and informs s.81 (religion as an extraneous consideration).

157. The RS respond that the applicable threshold in extradition/expulsion is "flagrant denial" of Article 9; lesser interferences are insufficient absent Article 3-level ill-treatment. Authorities: ***QH v SSHD; Z & T v UK***.

158. That Law 3894 addresses security concerns relating to the ROC and does not per se prohibit UOC worship; any restrictions are lawful and not shown to reach the flagrant denial threshold; persecution claims are better analysed under Articles 2/3/6 if made out.

159. They submit that on the evidence adduced, Orthodox worship remains possible; isolated/reported incidents and academic concerns do not establish a flagrant denial of Article 9.

Evidential Findings.

160. Having set out in summary the evidence and submissions and highlighted the limitations affecting the defence evidence, I begin my analysis and findings by accepting that those limitations are real and material.

161. The manner and timing of service, the absence of original material capable of forensic interrogation, the late instruction of experts, and the constraints thereby imposed on effective challenge by the Requesting State necessarily bear upon the weight that can properly be attached to aspects of the evidence relied upon by the Requested Person.

162. I accept the submission that such allegations often arise in circumstances where contemporaneous documentation is absent, access to independent verification is limited, and the availability of corroborative material is constrained by fear, detention, conflict, or state conditions.

163. Those difficulties provide essential context when assessing the evidence relied upon in support of such claims. However, those difficulties are not determined. They do not displace the Court's obligation to assess the totality of the evidence placed before it. The correct approach is not to treat the inherent problems of proving torture either excusing evidential weakness or negating it, but to evaluate the evidence objectively, realistically, and with appropriate caution, having regard both to its limitations and to the context in which it has been generated. It is against that holistic and balanced framework that I consider the competing factual and expert material and reach my findings and conclusion.

164. The RS submits that the provenance and dating of the photographs and CCTV relied upon by the RP are opaque; no originals or metadata were produced despite repeated requests, and the account of their origin shifted (RS Closings, "Images and the disputed chronology").

165. There was no timely medical or dental corroboration of the alleged injuries; records that could have objectively verified the timing were not provided.

i. A video dated 17 March 2022 showed no visible residual facial injury within 12 days of the alleged assaults; Professor Payne-James expressed surprise at such complete resolution, undermining the RP's account.
ii. Elements of the RP's narrative were said to be fantastical or internally inconsistent, including claims of presidentially-ordered assassination attempts and shifting explanations regarding devices/accounts used to capture images.
iii. The RS contended that the RP was not detained by the SBU but rather questioned as a witness; consequently, the ECtHR's custodial presumptions do not arise.

166. I address these points cumulatively, to set context and foreshadow my specific findings below.

167. The RS is entitled to make criticism of aspects of the RP's testimony. On several occasions his evidence bordered on exaggeration and, at others, verged on paranoia—for example, the allegation of a presidentially-directed assassination plot. That allegation was not foreshadowed in his written materials and was unsupported by independent evidence. It therefore carries little or no weight.

168. The handling of the photographic and messaging material was unsatisfactory. The failure to serve originals or to permit forensic interrogation of metadata; the late production of additional screenshots; and the shifting account as to devices and messaging platforms used, together materially diminish the weight I can attach to those images as proof of sequence and dating.

169. I take into account Professor Payne-James's evidence that, in his experience, one would ordinarily expect residual periorbital discoloration beyond 12 days when a "black eye" of the severity depicted is present. I also note, however, Dr Cohen's view that a near-complete resolution in that timeframe is not impossible. Neither expert's evidence is determinative alone; each must be weighed with the totality of the material.

170. Notwithstanding these difficulties, I found the RP's core account of mistreatment to be internally consistent across retellings in its essential features, and—crucially—mostly supported by contemporaneous photographic depictions of patterned injuries and by expert evidence concerning certain lesion types. While the images' exact dates are contested, their content is not fabricated on its face and aligns with the narrative of being bound and beaten.

171. I do not accept that the RP is presently suffering from PTSD. I prefer the careful and more recent assessment of Dr Hartley on that point. That conclusion does not mean the RP was never affected by PTSD at an earlier assessment; it simply reflects that any such condition has remitted to a sub-clinical level and is not established on the evidence before me as a current disorder.

172. Professor Payne-James fairly identified respects in which the medical picture was not classically supportive of the RP's most serious torture allegations (e.g., the mechanism for the right eye injury). However, other markers, including unexplained linear and circumferential marks compatible with ligature binding to the wrists, were insufficiently addressed by any alternative hypothesis advanced by the RS.

173. Taking the evidence as a whole, including

i) the internal consistency of the RP's core narrative,

(ii) the photographic depiction of injuries consistent with binding and blunt-force trauma,

and

(iii) the absence of a cogent, innocent explanation for the patterned ligature-type marks, I find—on the balance of probabilities—that the RP was ill-treated while in the custody of SBU officers in early March 2022.

174. To be clear, this finding does not depend on accepting the RP's more extreme allegations (e.g., a high-level assassination directive) or the precise dating sequence he advances. It rests on the convergence of credible features which, even after discounting exaggeration and discounting the evidential weaknesses identified by the RS, remain persuasive.

175. The conclusion that the RP was ill-treated in SBU custody is an evidential precursor for the s.87 analysis. Whether it translates into a present "real risk" of proscribed treatment on return is a separate question addressed elsewhere in my judgment by reference to likely custodial locus, the relevant prosecuting authority, and the effect of assurances. Nothing in this section should be read as predetermining that separate analysis.

176. The RS's criticisms of the RP's credibility are, on their face, largely well-founded in relation to peripheral or exaggerated elements of his account and the handling of supporting media.

177. I accept that those matters significantly reduce the weight of parts of his evidence. However, they do not displace the core finding above. Accordingly, I accept that Mr Dmytruk was subjected to ill-treatment while detained by the SBU. I reject the contention that no such mistreatment occurred.

178. I agree with the submissions advanced on behalf of the Requesting State in relation to the evidence of Ms Rohan and Dr Carroll. I accept that both witnesses gave evidence beyond the proper scope of their respective expertise, and that this significantly limits the weight that can safely be attached to their opinions.

179. Ms Rohan has no qualifications in Ukrainian law, has never visited Ukraine, does not speak Ukrainian or Russian, and has no direct experience of Ukrainian courts or detention facilities. Her evidence was derived largely from a limited survey exercise and a small number of remote conversations, conducted in a different prosecutorial context, and cannot be regarded as providing a reliable or representative account of the operation of the Ukrainian legal system or prison conditions relevant to this case.

180. I further accept that the error in her original report, adopting an incorrect attribution said to have been made by President Zelenskyy, illustrates the risks inherent in relying on secondary material outside an expert's core competence. Similarly, Dr Carroll's expertise lies in the religious sphere. He is not qualified to give opinion evidence on Ukrainian politics, prosecutorial motivation, or the functioning of the Ukrainian legal system.

181. To the extent that his report and oral evidence strayed into those areas, I agree that it was outside his expertise and I attach little, if any, weight to it. This is not a criticism of either witness' good faith, but a necessary consequence of the Court's obligation to assess expert

evidence rigorously and to ensure that conclusions are drawn only from material falling within a witness' demonstrated area of competence.

182. Accordingly, while I have taken the evidence of Ms Rohan and Dr Carroll into account as far as it provides background or contextual material within their respective fields, I accept the Requesting State's submission that their evidence does not materially advance the Requested Person's case on the core issues arising in these proceedings.

183. That reduced weight forms an important part of the evaluative exercise I am required to undertake.

Assurances

184. The assurances provided by the Requesting State ("RS"), taken as a whole, are compliant with the reliability and sufficiency requirements articulated in Othman v United Kingdom at [188]– [189]. They have been disclosed to the Court ([188(i)]), are specific rather than general or vague ([188(ii)]), emanate from the Prosecutor General's Office and central authorities capable of binding the State ([188(iii)]–[188(iv)]), concern treatment which would in any event be unlawful domestically ([188(v)]), are given by a Contracting State ([188(vi)]), operate within the context of strong bilateral relations ([188(vii)]), and are susceptible to objective verification through diplomatic and legal-access monitoring mechanisms ([188(viii)]). They also sit within a framework of international cooperation and willingness to investigate allegations of ill-treatment ([188(ix)]). Against that backdrop, I address each challenge advanced by the Requested Person ("RP") and explain why, even where residual concerns exist, the assurances meet the necessary criteria to neutralise identified risks.

Analysis and conclusions

S**ECTION 81(a) EXTRADITION ACT 2003 – POLITICAL MOTIVATION**

185. The RP contends that the prosecution is politically motivated within the meaning of section 81(a). He relies upon his political opposition to President Zelenskyy, his perceived pro-Russian stance, public criticism of legislation affecting the Ukrainian Orthodox Church ("UOC"), the chronology of events (alleged offending in March 2022, notice of suspicion in August 2024, subsequent public denunciations, and sanctions in 2025), and expert evidence describing adverse state treatment of those associated with the UOC.

186. Having considered the evidence in the round, I do not accept that the prosecution is politically motivated. While the RP's submissions have superficial attraction, they do not withstand closer scrutiny.

187. First, the chronology is informative. The alleged criminal conduct occurred in March 2022. The investigation commenced in response to that conduct and well before the period in which the RP asserts political or religious animus crystallised. It is not evidentially sustainable to

characterise the investigation's initiation as a product of political hostility which, in the RP's own case, emerged significantly later.

188. Secondly, I accept that senior Ukrainian officials have expressed hostility towards individuals perceived as sympathetic to Moscow or aligned with the UOC, including the RP, and such statements form part of the wider political context. However, context is not determinative either. Political rhetoric, even if robust or hostile, does not of itself establish that a criminal prosecution is politically motivated, it is but one factor amongst many for the court to consider.

189. Thirdly, the sanctions imposed in 2025 were applied by a separate body pursuant to a distinct statutory process, directed at conduct occurring while the RP was in the United Kingdom. They relate to his continuing perceived pro-Russian stance in the ongoing conflict, are collateral to the criminal proceedings, and do not bear upon the motivation for the earlier decision to investigate or prosecute.

190. The statutory bar applies only where political motivation is the dominant motivation. Political hostility, even if present, is not necessarily synonymous with political motivation. On the evidence before me, the dominant and operative factors driving both investigation and extradition request were the RP's alleged criminal conduct ***and*** his subsequent flight from the jurisdiction and not political animus.

191. Even were their residual concern about possible political or religious prejudice, the assurances directly and expressly exclude prejudice at trial by reason of religion or political opinions and confirm that proceedings are not driven by extraneous considerations. They guarantee full defence rights, including representation by a lawyer of choice and access to the court. These commitments are specific ([188(ii)]), formally issued by the Prosecutor General's Office capable of binding the State ([188(iii)]), and reinforced by judicial oversight and the possibility of international observation, rendering them objectively verifiable ([188(viii)]). Bearing in mind the receiving State's legal prohibition of discriminatory treatment ([188(v)]), the assurances meet the Othman criteria and dispel any serious possibility of prejudice at trial within the meaning of section 81(b).

192. The bar in section 81(a) is not made out. The RS has provided a coherent and plausible explanation for chronology, investigative steps preceded the later political developments, and the issuing of a notice of suspicion followed the RP's flight to Moldova rather than any intensification of political rhetoric. Moreover, even if residual risk existed, the express assurances would be adequate to address it.

ARTICLE 2 ECHR – RISK TO LIFE ARISING FROM ARMED CONFLICT

193. The RP relies on expert evidence concerning the impact of the ongoing international armed conflict on the Ukrainian prison estate and the availability of effective air-raid shelters. Experts Mr Tugushi and Dr Carroll described structural concerns, variation in shelter quality, and

broader security risks. The RP submits that Russian missile strikes have reached western regions, including Ivano-Frankivsk, and that no region in Ukraine can be regarded as safe.

194. The RS properly accepts that missile strikes have reached western regions but submits that the level of risk falls materially below the threshold required to establish a real risk of breach of Article 2. The RS have provided detailed, facility-specific information confirming the availability and adequacy of shelters at proposed detention institutions. Each facility contains basement shelters equipped with essential supplies, seating, water, sanitation, and power, and each has been formally inspected and approved as compliant for air-raid protection. None of the relevant prisons or the court building in Ivano-Frankivsk has sustained damage from missile strikes to date.

195. The expert evidence relied upon by the RP was necessarily generalised, frequently reliant on secondary sources, and not specific to the institutions in which the RP would be held. Both witnesses accepted under cross-examination that they lacked detailed, location-specific data regarding missile-strike frequency, structural integrity assessments, or documented failures of the relevant shelters.

196. Applying the criteria identified in ***LM*** (Russia) and ***AM & AM*** (Somalia), and considering the evidence of the actual conduct of hostilities, I find that:

i. There is no evidence that either party to the conflict is using methods (outside Kyiv) that ***directly target civilians within detention facilities***.
ii. While Russian missile capability extends across Ukraine, the use of such tactics in the ***relevant region is not widespread***.
iii. There is ***no ground combat in the region***.
iv. There is ***no evidence of civilian casualties, still less detainee casualties, in the area as a result of airstrikes.***

197. I accept that missile attacks have occurred in the region, including shortly before the extradition hearing. The existence of some risk cannot be denied. However, the test under Article 2 is whether **there is a real risk of death arising from the conditions in which the RP would be detained.** That assessment must account not only for the existence of risk, but for mitigating measures in place.

198. Even accepting that some residual risk exists, the assurances are location-specific and operational: they provide that detention and any court hearings will occur in western regions away from active hostilities and that the relevant institutions are equipped with appropriate civil-defence shelters to safeguard life during air-alerts. The specificity of place and protection ([188(ii)]), the fact that these are centrally coordinated measures ([188(iv)]), and the capacity for diplomatic and consular verification ([188(viii)]) mean the measures can be relied upon in practice.

199. The assurances identify particular detention facilities and confirm certified, equipped shelters together with established alert and movement protocols. They also provide flexibility to relocate proceedings or permit remote participation where required for safety. Those features are concrete and verifiable ([188(ii)], [188(viii)]), emanate from authorities able to ensure compliance across institutions ([188(iii)]–[188(iv)]), and concern protections mandated by domestic law and practice ([188(v)]). They therefore satisfy the Othman criteria.

200. The availability of approved shelters within all proposed detention institutions materially reduces the level of risk to below the Article 2 threshold. This conclusion is reinforced by consistent evidence that these facilities have operated effectively throughout the conflict; by the absence of any instance in which detainees have been harmed in western Ukraine; and by the fact that any trial could be conducted remotely or relocated if the RP insisted on physical attendance.

201. The RS correctly observe that the RP's position—that he would insist on attending trial in Kyiv—cannot heighten his Article 2 risk. Adequate arrangements exist for the case to be transferred or for him to attend by CVP. The choice to expose himself to a theoretically higher-risk area cannot be relied upon to manufacture an Article 2 breach.

202. Taking the evidence as a whole, I find that the risk to the RP arising from the armed conflict, even when considered alongside expert concerns about the detention estate, does not reach the level of a real risk required to make out a violation of Article 2 ECHR. The mitigations in place—including approved shelters, geographical distance from active hostilities, and flexibility as to location and mode of trial—together with the express, specific, and verifiable assurances provided, are sufficient to ensure compatibility with Article 2. The Article 2 objection is not made out.

ARTICLE 3 ECHR – RISK OF ILL-TREATMENT AND DETENTION CONDITIONS

203. The RP alleges that he was unlawfully detained and tortured by officers of the SBU on 4–5 March 2022. He describes sustained physical assaults, threats, suffocation, burning, and humiliation. He relies on photographs, expert medical opinion, patterns in social-media activity, and the absence of state records which would ordinarily accompany lawful detention. The RS challenges the provenance and authenticity of the photographic material and aspects of the RP's account.

204. Despite evidential difficulties, I am satisfied, on the balance of probabilities, that the RP was subjected to ill-treatment during the events of 4–5 March 2022. Corroboration in torture cases is notoriously difficult. The RP's core account has remained consistent, and the available supporting material, particularly the ligature marks and the absence of lawful detention records—provides sufficient evidential foundation. The RP has therefore proved his claim of ill-treatment.

205. The RP contends that the Ukrainian authorities failed to investigate his torture allegations adequately. I am not satisfied that this allegation is made out. The RP's principal complaint concerns disagreement with the findings or adequacy of investigative steps, rather than the absence of investigation itself. The lack of authenticated underlying material from the defence, the passage of time, and the absence of contemporaneous formal complaints significantly weaken the assertion. On the evidence before me, I do not find that the Ukrainian authorities failed to investigate.

206. The RP argues that, if returned, he faces a real risk of further ill-treatment contrary to Article 3. He relies on his past torture, continued hostility from state actors, sanctions, and country information addressing conditions in detention facilities.

207. I accept that the RP was previously mistreated. However, even though I accept that past ill-treatment occurred, I am satisfied that the assurances provided sufficiently mitigate any real risk of recurrence.

208. The assurances expressly prohibit torture and inhuman or degrading treatment, specify the exact institutions in which the RP will be held, guarantee minimum personal space and access to medical care, and permit regular monitoring, including by UK officials. Their precision ([188(ii)]), binding provenance ([188(iii)]), and verifiability through objective monitoring mechanisms ([188(viii)]) mean they can be relied upon in practice. Given that the treatment complained of would be unlawful domestically ([188(v)]) and that the authorities profess cooperation with international monitoring ([188(ix)]), the assurances meet the Othman criteria and dispel any real risk of further ill-treatment.

209. Critically, institutional responsibility has changed since early 2022. The SBU will not detain or interrogate the RP; any detention will occur in ordinary facilities under judicial control. This institutional change, coupled with the express and verifiable assurances, is sufficient to assuage any real risk under Article 3.

210. The RP argues that conditions of detention and the risk arising from the ongoing armed conflict engage Articles 2 and 3. He submits that no region in Ukraine can be regarded as safe.

211. The RS proposes that the RP would be detained and tried in Western Ukraine, in facilities not affected by active hostilities, and which contain established shelter provisions and monitoring mechanisms. I accept the RS's evidence. Although imperfections exist within the detention estate, they do not rise to the level of a real risk of inhuman or degrading treatment. The proposed arrangements, particularly the availability of shelter infrastructure and the geographic separation from active conflict zones, are sufficient to mitigate relevant risks.

212. Even were residual concern to exist, the location-specific assurances regarding certified shelters, alert protocols, and the flexibility to relocate or conduct proceedings remotely are concrete, verifiable, and binding. They concern protections mandated by domestic law and are

susceptible to diplomatic verification. They therefore satisfy the Othman criteria and reduce any residual risk to below Article 3 threshold.

213. For the reasons set out above, while the RP was subjected to ill-treatment in March 2022, the assurances adequately address risks under Article 3. The institutional changes, express prohibitions on ill-treatment, specification of detention facilities, guarantees of monitoring, and the verifiable nature of these commitments mean that there is no real risk of a breach of Article 3 upon return. The Article 3 objection is not made out.

ARTICLES 5 AND 6 ECHR – LIBERTY, FAIR TRIAL, AND SECTION 81(b) PREJUDICE AT TRIAL

214. The RP submits that he faces a real risk of an unfair trial contrary to Articles 5 and 6, citing alleged judicial corruption, political influence, and the wartime environment, including the operation of martial law provisions. He further contends under section 81(b) that he would be prejudiced at trial because of his religion or political opinions. I take them together because of the obvious overlap both evidentially and legally.

215. The RS relies on judicial oversight of pre-trial steps, random allocation of judges, appellate scrutiny, and constitutional and procedural safeguards that remain operative. Having considered the evidence, I am satisfied that the RP has not established a real risk of a flagrantly unfair trial.

216. The relevant martial-law provisions do not apply in circumstances where ordinary law continues to operate, as is the case in Western Ukraine. Procedural safeguards remain available, and international monitoring can occur if needed. The evidence relied upon by the RP concerns general concerns about systemic pressure rather than concrete evidence of prejudice in this case.

217. The expert evidence adduced by the RP largely addresses systemic or contextual concerns, rather than specific prosecutorial decision-making in this case. While I accept that political rhetoric and hostility towards perceived collaborators form part of the wider background, the evidence does not establish that such considerations were the dominant or operative motivation for the prosecution.

218. Again, even were there residual risk of prejudice or unfairness, the assurances provide concrete guarantees. They directly and expressly exclude prejudice at trial by reason of religion or political opinions and confirm that proceedings are not driven by extraneous considerations. They guarantee full defence rights, including representation by a lawyer of choice and access to the court, prompt production before a court on return, judicial review of any detention, consideration of less intrusive measures, legal representation, and participation at hearings included by remote link where required.

219. The guarantees are procedurally specific ([188(ii)]), issued by authorities who can bind the State and coordinate compliance ([188(iii)]–[188(iv)]), reinforced by judicial oversight and the possibility of international observation, and are susceptible to verification through legal access

and trial observation mechanisms ([188(viii)]). Considered together, they satisfy the Othman criteria and exclude any real risk of a flagrant denial of justice or prejudice at trial within the meaning of section 81(b).

220. I find that the RP has not demonstrated a real risk of a flagrantly unfair trial or of prejudice at trial. Judicial oversight, random allocation of judges, appellate review, and procedural safeguards remain in place notwithstanding martial law. Moreover, the express, specific, and verifiable assurances provided directly address and neutralise any residual concerns. The objections under Articles 5 and 6 ECHR and section 81(b) are not made out.

Section 87 EA 2003Human Rights – Article 8 ECHR Family and Private life

221. The leading case is ***HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC25.*** This amplifies the guidance given in ***Norris v USA (2010) UKSC 9***.

222. The convention right is not an unqualified right, I must consider whether on the particular facts of these requested person's circumstances, the interference with his rights to a family and private life, would be outweighed by the public interest in extradition.

223. I must conduct balanced exercise. LCJ Lord Thomas set out the approach this Court should adopt in the case ***of Polish Judicial Authorities v Celinksi (2015) 1274 Admin*** underlying the principles laid down in ***Norris and HH***. The LCJ said (paras 8-12).

> *i. HH concerns 3 cases, each of which involved the interests of children, and the judgement must be read in that context.*
>
> *ii. The public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging people to see the UK as a state willing to accept fugitives from justice.*
>
> *iii. The decisions of the judicial authority of a member state making a request should be accorded a proper degree of mutual confidence and respect.*
>
> *iv. The independence of prosecutorial decisions must be borne in mind.*
>
> *v. Factors that mitigate the gravity of the offence or the culpability will ordinarily be matters that the court in the requested state will take into account. Although personal factors relating to family life will be factors to be brought into the balance under article 8, the extradition judge must also take into account that these will also form part of the matter that is considered by the court in the requesting state in the event of conviction.*
>
> ***In relation to conviction appeals:***
>
> *I. The judge at the extradition hearing will seldom have detailed knowledge of the proceedings or of the background or previous offending history of the offender which the sentencing judge had before him.*

II. Each Member State is entitled to set its own sentencing regime and levels of sentence. Provided it is in accordance with the Convention, it is not for a UK judge to second guess that policy. The prevalence and significance of certain types of offending are matters for the requesting state and judiciary to decide; currency conversions may tell little of the monetary value of items stolen or of sums defrauded. For example, if a state has a sentencing regime under which suspended sentences are passed on conditions such as regular reporting and such a regime result in such sentences being passed much more readily than the UK, then a court in the UK should respect the importance to courts in that state of seeking to enforce non-compliance with the terms of a suspended sentence.

III. It will therefore rarely be appropriate for the court in the UK to consider whether the sentence was very significantly different from what a UK court would have imposed, let alone to approach extradition issues by substituting its own view of what the appropriate sentence should have been. As Lord Hope said in HH at paragraph 95 in relation to the appeal in the case of PH, a conviction EAW:

IV. "But I have concluded that it is not open to us, as the requested court, to question the decision of the requesting authorities to issue an arrest warrant at this stage. This is their case, not ours. Our duty is to give effect to the procedure which they have decided to invoke and the proper place for leniency to be exercised, if there are grounds for leniency, is Italy."

V. Lord Judge made clear in paragraph 132, again when dealing with the position of children, that:

VI. "When resistance to extradition is advanced, as in effect it is in each of these appeals, 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 to reduce what would otherwise be an immediate custodial sentence in favour of a non-custodial sentence (including a suspended sentence)."

224. Therefore, all relevant factors must be balanced one against another, each RP must be considered separately, although there will inevitably be considerable overlap. The interests of children are a primary consideration, but other factors include but are not limited to.

• The public interest in honouring extradition treaties,

• The Article 8 rights of victims, as well as the RP and his family

• The gravity of the offences,

• The strong public interest in ensuring that children are properly brought up,

• Delay and whether during the lapse of time the RP and (if relevant) family have made a new and blameless life for him/ themselves

• The age of the requested person at the time of the conviction.

• The UK should not be treated as a safe haven by those avoiding prosecution or sentences in other EU States

• Impact of his private life that extradition that would cause, including the financial effect of loss of employment.

The balancing exercise

225. I approach Article 8 by applying the structured proportionality exercise described in ***Norris***, ***HH, Celinski*** and, most recently, ***Andrysiewicz v Poland***, bearing firmly in mind the constant and weighty public interest in honouring extradition arrangements and in ensuring that this jurisdiction is not treated as a safe haven. The test remains a demanding one: only in truly exceptional cases will the interference with private and family life outweigh the public interest in surrender.

226. Against that framework, the factors weighing in favour of extradition are well known and significant: these are proceedings brought by a friendly state pursuant to treaty obligations; the public interest in trial for alleged offending is strong; and mutual confidence requires appropriate respect for the requesting state's criminal process. Standing alone, these matters would ordinarily be decisive.

227. However, Article 8 requires a fact-sensitive assessment of all relevant circumstances. On the evidence as I have found it, there are several countervailing features which, individually, did not meet the threshold for the other statutory or Convention bars, but which are nonetheless relevant to the overall balance. First, I have accepted that the RP was previously subjected to ill-treatment in March 2022; while that finding did not of itself establish a real risk of recurrence under Article 3 in light of the assurances now given, it remains a serious matter and forms part of the lived context in which the proportionality of return must be evaluated.

228. Secondly, although I did not find the section 81 or Article 9 objections made out, I am satisfied that the RP is publicly perceived, and would likely continue to be perceived, as aligned with or sympathetic to Russia. That perception, however misplaced it may or may not be, has practical consequences in the current climate. It magnifies the intrusiveness of interference with family life by increasing the RP's vulnerability in custody and in the community, and by heightening the anxiety and disruption experienced by his close family. Those effects, whilst falling short of proving a real risk of prejudice for the purposes of section 81 or a flagrant denial of Article 9, are material to the Article 8 balance.

229. Thirdly, I am satisfied that, notwithstanding the mitigation measures described, there remains some non-trivial risk inherent in returning any person to a country engaged in an international armed conflict. I have found that the evidence does not reach the Article 2/3 thresholds when analysed strictly by reference to location-specific risk and available protections. But the existence of a residual risk of serious injury or death from missile or drone attack, particularly during movements to and from court or within custodial settings, cannot be ignored when assessing the proportionality of the interference with private and family life. It contributes to the exceptional cumulative picture in this case. Afterall extradition potentially places those risks upon his family if they wish to remain together as a family unit.

230. Fourthly, I take into account the gravity of the alleged conduct and the likely penal consequences in the event of conviction. Although the allegations are plainly not trivial, they are not at the highest end of seriousness. The material before the Court suggests that any custodial term, if imposed, is likely to be measured in a short sentence rather than years. In the particular circumstances here, the combination of a comparatively limited penal exposure with the practical realities of removal to, and detention within, a war-affected state would impose a degree of disruption and anxiety on the RP and his young child which substantially exceeds the 'ordinary' and inevitable consequences of extradition (as well to his wife and unborn child she is now carrying).

231. Fifthly, I have regard to the findings below under section 91 of the Extradition Act 2003. Although the medical evidence falls short of establishing that extradition would be unjust or oppressive as a standalone statutory bar, the underlying material remains relevant to Article 8 proportionality exercise. The absence of a diagnosable mental disorder does not negate the cumulative psychological pressures arising from the RP's circumstances, including past ill-treatment, public perception as sympathetic to Russia, residual conflict-related risks, and the practical realities of detention. These factors, while insufficient to satisfy section 91 on their own, contribute to the overall evaluation of the quality and degree of interference with family life. They therefore form part of the exceptional cumulative picture.

232. Finally, I bear in mind the RP's family circumstances, including the presence of a dependent child (and one on the way) and the evidence of the emotional and practical reliance placed upon him. Even allowing for the general proposition that family hardship is a common incident of extradition and rarely decisive, the cumulative effect of the factors identified above, past

ill-treatment, public perception as a Russian sympathiser, residual conflict-related risk, and limited penal exposure, means that the impact on the RP's family life would be exceptional in both degree and quality.

233. Standing back, therefore, and conducting the balancing exercise holistically, I am satisfied that this is one of the rare cases in which the cumulative and overall interference with the RP's and his family's Article 8 rights outweighs the strong public interest in extradition. While none of the other bars succeeded when considered in isolation, the matters raised under those grounds materially informed the Article 8 analysis. Taking them together, I find that surrender would be a disproportionate interference with private and family life. In due course I will discharge in accordance with **section 87(2)** of the Extradition Act 2003.

ARTICLE 9 ECHR – FREEDOM OF RELIGION AND RISK OF RELIGIOUS PERSECUTION

234. The RP relies upon his association with the UOC and expert evidence describing a broader pattern of adverse state treatment of those associated with the Church. He contends that he faces a real risk of religious persecution under domestic law and a flagrant denial of Article 9 rights.

235. In extradition proceedings, only a flagrant denial of Article 9 can bar surrender. The evidence demonstrates that Law 3894 does not amount to a blanket prohibition on worship.

236. The expert evidence relied upon by the RP describes interference and discrimination concerns but does not establish a nullification of the essence of the right to manifest religion.

237. Orthodox worship remains possible, albeit within a contested and politically sensitive environment. Any conduct reaching the severity threshold would properly fall under Articles 2, 3, or 6. The RP has not established that Article 9 is engaged to the requisite standard.

238. Any residual concern regarding religious freedom or risk of persecution on religious grounds is expunged by the assurances which explicitly state that the proceedings are not aimed at prosecuting or punishing on account of religion and that freedom of thought, conscience and religion will not be restricted. Those assurances are clear and specific ([188(ii)]), made by bodies capable of binding the State ([188(iii)), and concern treatment which would be unlawful domestically ([188(v)]). Their reliability is further supported by the availability of objective verification through diplomatic access and legal monitoring ([188(viii)]). Applying the high extradition threshold, these assurances meet the Othman criteria and negate any real risk of religious persecution or flagrant denial of Article 9 rights.

239. I find that the RP has not established a flagrant denial of Article 9 rights. The expert evidence does not demonstrate nullification of the essence of the right to manifest religion. Moreover, the express assurances provided directly address and exclude any risk of prosecution or punishment on account of religion. The Article 9 objection is not made out.

240. The RP asserts that senior officials directed attempts upon his life and orchestrated his abduction and torture to silence him.

241. The RS characterizes these allegations as inherently implausible and points to their absence from earlier accounts. I agree with the RS. These assertions lack corroboration, are inconsistent with the RP's subsequent public activity, and do not withstand scrutiny. They do not form a sustainable basis for resisting extradition**.**

Section 91 EA 2003 – Oppression due to Ill health

242. In considering whether extradition would be oppressive by reason of the RP's health under s.91 of the 2003 Act, I have considered the expert evidence with particular care. Having done so, I unhesitatingly prefer the evidence of Dr Hartley.

243. His assessment was both more thorough and significantly more contemporaneous, being undertaken after the RP had been politically active for a substantial period and at a time when his functioning could be meaningfully evaluated.

244. Dr Hartley's evidence was balanced, clinically reasoned, and firmly rooted in direct observation. He found no evidence of any current depressive disorder, no active PTSD, and, at most, historical symptoms that had resolved to a sub-clinical level. He also gave clear evidence that the RP's overall presentation, resilience, and continued engagement with political life were inconsistent with any form of disabling psychiatric condition.

245. By contrast, the conclusions of Dr Cohen were materially weaker and less persuasive. They relied heavily on the RP's self-reported history, the reliability of which was substantially undermined by the many inconsistencies and fantastical elements identified elsewhere in his evidence, including his shifting account of assassination attempts and plot by Zelensky to assassinate Trump and his explanation for why no contemporaneous medical records, dental records, or other corroborative evidence had been produced.

246. Dr Cohen's reliance on screening tools, rather than sustained clinical observation, and her acceptance of descriptions that were later shown to be exaggerated or unreliable, significantly limits the weight her opinion can carry. Moreover, her suggestion that the RP continued to suffer the effects of PTSD sits at odds with the undisputed factual record: throughout 2023 and 2024 he remained fully engaged in public political activity, delivering speeches, conducting television interviews, and campaigning energetically on matters of political and religious controversy. As Dr Hartley made clear, such behaviour is directly at odds with the hallmark avoidance patterns expected in individuals with active PTSD.

247. I also note that Dr Hartley, unlike Dr Cohen, had the benefit of assessing the RP after he had been living in the United Kingdom for a sustained period, at a time when any acute reaction to the alleged events of 2022 ought either to have stabilised or become clinically apparent. His findings of stability, resilience, and the absence of any current mental disorder are consistent

with the picture provided by the RP's day-to-day functioning, his familial support network, and his ongoing political engagement, and are inconsistent with a clinical picture of fragility or deterioration.

248. Finally, nothing in the evidence indicates that the RP's mental health would be likely to deteriorate ***significantly*** upon extradition, still less that any such deterioration would be so grave as to render extradition oppressive. Dr Hartley was clear in his oral evidence that he saw no basis to predict a serious psychiatric relapse, and that appropriate monitoring and treatment would be available in Ukraine should it be required. The RP's own presentation—organised, articulate, confident, and plainly capable of sustained adversarial engagement—reinforces that conclusion.

249. Taking the evidence as a whole, I am satisfied that the high threshold in s.91 has not approached. The RP has not demonstrated that extradition would be unjust or oppressive by reason of his health, and the s.91 challenge therefore fails.

Abuse of Process

250. Technically I am not obliged to consider this challenge as it is a residual power where no statutory challenge has succeeded, however in case I am wrong on any of my conclusions I briefly deal with the abuse argument below.

251. The abuse jurisdiction is exceptional and requires clear, cogent evidence of bad faith or manipulation of the extradition process. The RS submissions emphasises that alleged inaccuracies or contested interpretations in Further Information do not, without more, evidence a collateral prosecutorial purpose.

252. The RP's allegations rely heavily on inference from chronology, public rhetoric and disputed procedural issues. On the material provided, these do not establish deliberate manipulation of this Court's process or knowing misleading by the RS; the RS furnished repeated assurances and contextual explanations.

253. I am satisfied there is no clear, cogent evidence of bad faith or manipulation by the RS. The application to stay the proceedings as an abuse is refused.

Orders

254. The appropriate order is therefore one of discharge under **section 87(2)** of the Extradition Act 2003.

255. Pursuant to S105(5) EA 2003 the RS has 14 days to appeal this decision.

Paul Goldspring,

Senior District Judge (Chief Magistrate) for England and Wales