Neutral Citation Number: [2024] EWHC 2766 (Admin)

Case No: AC-2023-LON-002596

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 October 2024

Before :

MRS JUSTICE STEYN DBE

- -

Between :

Miklos ORSOS

Appellant

- and -

Tribunal of Pecs HUNGARY

Respondent

- -
- -

Rabah Kherbane (instructed by EBR Attridge) for the Appellant
Amanda Bostock (instructed by CPS Extradition Unit) for the Respondent

Hearing dates: 29 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 31 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn DBE:

1. This is an appeal by the Appellant, Miklos Orsos, against the decision of District Judge Leong ('the Judge') at Westminster Magistrates' Court on 30 August 2023 to order his extradition to Hungary pursuant to four arrest warrants issued by the Judicial Authority. The appeal is brought pursuant to section 26 of the Extradition Act 2003 ('the 2003 Act') on the single ground that evidence is available that was not available at the extradition hearing ('the fresh evidence') which, if it had been before the Judge, would have resulted in her finding that it would be unjust or oppressive to extradite the Appellant, and therefore his discharge would have been required pursuant to s.25 of the 2003 Act.

The Arrest Warrants

2. The Appellant's extradition is sought pursuant to four warrants:

   i) The first warrant (AW1) was issued on 27 July 2021. It is a conviction warrant. On 19 November 2019, a sentence of 1 year and 5 months' imprisonment was imposed of which 1 year, 4 months and 11 days remains to be served. The sentence relates to (a) an offence of public disorder in a bar on 7 September 2017 where the Appellant was intoxicated, smashed a bottle over his own head and punched another customer several times, tussling with him until they rolled down the stairs and caused damage to a bin; then throwing a chair at the customer he had been fighting with, after he had been pulled away; and (b) criminal damage to a department store door which he kicked causing the glass to break on 3 February 2018.

   ii) The second warrant (AW2) was issued on 23rd July 2021 and is an accusation warrant for which a maximum sentence of 3 years' imprisonment could be imposed. The allegation is that on 11 April 2019 the Appellant and another attempted to remonstrate with a mother and her child and went to attack her. The mother tried to run away, with her child, following which a male attempted to protect them and was assaulted with fists and kicks.

   iii) The third warrant (AW3) was issued on 18 August 2021. Like AW2, it is an accusation warrant for which a maximum of 3 years' imprisonment could be imposed. AW3 relates to an incident on 16 February 2019 when the Appellant was in a nightclub with his partner. It is alleged that he perceived her to be dancing with other people, took her outside, grabbed her by the hair, hit her face and bit her cheek. Passers-by who tried to assist were threatened. One was chased with a clenched fist and the other hit in the face. Following his arrest, the Appellant ran at a glass door in the police station and broke the glass.

   iv) The fourth warrant (AW4) was issued on 27 July 2021 and is a second conviction warrant. On 26 January 2021, a sentence of 6 months' imprisonment became final, of which the entirety remains to be served. That sentence was imposed for offending on 13 December 2018 when the Appellant and his partner were taken to hospital by paramedics due to excessive alcohol consumption. The Appellant threatened to kill one of the orderlies and fought his way through others trying to restrain him to bang on the ambulance where the orderly had attempted to hide. He managed to open the door and attack the orderly again,

who blocked his blows and was kicked in the forearm. Eventually the Appellant was brought to the ground and sedated in order to stop the violence.

3. All four warrants were certified on 28 October 2021. The Judge concluded that the Appellant was a fugitive in respect of AW1 and AW3.

Proceedings before the District Judge

4. In July 2020, the Appellant arrived in the UK. He has previously spent periods living in the UK in 2011 and 2015. On 7 December 2021, the Appellant was arrested in respect of AW1, 2 and 3. He appeared at Westminster Magistrates' Court the following day when proceedings were adjourned. On 4 April 2022, the Appellant was arrested on AW4.

5. On 21 April 2022, the day before the extradition hearing was due to begin, the court granted the Appellant's application to vacate the hearing and further directions were set. The extradition hearing proceeded on 23 August 2022 and was adjourned part heard to 9 January 2023. That hearing was converted to a case management hearing and the extradition hearing then continued on 21 and 22 August 2023. The Judge handed down her reserved judgment a week later. One of the many issues that the Judge addressed, and the one which is the focus of this judgment, was s.25. However, I also note the more general point that, having heard the Appellant give evidence, the Judge found that he was not a credible or truthful witness (Judgment [127], [154], [242]).

6. The Judge had before her two reports from Dr Alan Reid, a Consultant Forensic Psychiatrist. His main report is dated 15 March 2022, and his first Addendum Report is dated 6 August 2023. Dr Reid also gave oral evidence. The Judge addressed his evidence with care at paragraphs 54-69 of her judgment, as well as in the context of her findings regarding the Appellant's physical and mental conditions when addressing s.25 (Judgment [161]-[175].

7. The Judge noted that Dr Reid could find no evidence of mental illness but rather considered the Appellant's presentation was highly suggestive of an emotionally unstable personality type, albeit he did not think it advisable to provide a firm diagnosis in the absence of collateral information from others who knew him or any psychometric assessment of the Appellant's personality (Judgment [55], [57], [62]).

8. At [54] the Judge noted that Dr Reid considered "*thoughts of self-harm or suicidal ideation appeared to be very much linked to the current extradition proceedings*". The Appellant told him that "*if he were not subject to extradition proceedings, he would be very happy*" but that he would "*die [rather] than be returned to Hungary*". The Judge noted that Dr Reid considered the Appellant's account of self-harm, namely "*cutting his arms or neck superficially, banging his head against walls or hitting himself on the head with objects such as a beer bottle*" were likely to be a manifestation of his personality traits ([56]). Dr Reid considered that the Appellant caused himself harm when "*criticised, thwarted or frustrated by circumstances*" ([56]) and so extradition would "*almost certainly*" result in *threats* of suicide ([58], my emphasis). As the Judge noted, "*Dr Reid said that it was more likely that any self-harm would not be of a severity that was life-threatening but given the RP's impulsivity, he could make a more serious attempt that could threaten or even end his life*" [58].

9. At [59], the Judge noted that when Dr Reid interviewed the Appellant a second time in August 2023, the Appellant told him that:

> "… in May 2023 he was particularly distressed. His children had been taken into care. His partner had made allegations against him that were in due course not proceeded with and he was prevented from returning to the premises that he shared with his former partner. He climbed onto the balcony of a tall building when he had thoughts of killing himself. He then called his solicitor who was acting for him in the Family Court. He said that the police came to take him to hospital.
>
> Dr Reid examined the medical records of the RP. The records confirmed that he was taken to the Fairfield General hospital on the 9th May 2023. The RP recounted the history of his domestic life and said that it was an impulsive decision that was not planned and he did not have the intent to end his life. However, he stated that he felt stuck in the system and he felt like he would not get his children back and that made him very upset. He was discharged the same day. …"

10. Later the same month, on 23 May 2023, the Appellant was arrested for breaching a court order and, while under arrest, he "*began to head bang and bite himself saying that he wanted to die. It took 4 officers over an hour to restrain him*" ([61]).

11. Dr Reid's evidence was that, notwithstanding the breakdown of his relationship with his partner and separation from his children, the Appellant's mental state was better in August 2023 than it had been in March 2022. While his relationship with his partner had been a protective factor, at times it was destabilising and caused the Appellant a great deal of stress ([64]-[65]).

12. The Judge accepted Dr Reid's diagnosis. She acknowledged that the Appellant "*could be unpredictable*" ([171]). She observed at [168]:

> "It is clear that when the RP was placed in stressful situations that appeared to be of his own making from the descriptions provided, he would make threats of self harm or suicide that would lead to his being taken to hospital or being examined by a health professional. As there were no mental health issues identified, he was invariably discharged. It appears that the RP managed in such situations to manipulate professionals dealing with him into thinking that he was suffering from a mental health illness that required medical attention when such was not the case."

13. Addressing the question whether the risk that the Appellant will succeed in committing suicide, whatever steps are taken, is sufficiently great to result in a finding of oppression (*Turner v Government of USA* [2012] EWHC 2426 (Admin), [28], the Judge said:

> "Significantly, Dr Reid said that although there was an increased risk of self-harm, that would not be life threatening although he

> could not rule out '**some risk**' that the severity of injury could potentially be life threatening. Thus in applying the test set out in *Turner*, I do not find that there is a substantial risk that the RP will commit suicide. In my view, Dr Reid's assessment of 'some risk' falls far short of the standard required."

14. Addressing the question whether, in any event, it would be the Appellant's own voluntary act which puts him at risk, not his mental condition, the Judge concluded:

> "Given the list of examples set out above of the circumstances where the RP threatened self harm or thought of suicide, I am of the view that it was not down to mental conditions such as moderate or severe depression or symptoms of psychotic mental illness. Rather it was the RP's impulsive personality that made him issue such threats to the authorities. I find that the RP was also attempting to manipulate the professionals to ensure that he was not kept in custody for long when arrested.
>
> Consequently I do not find that there are mental health conditions here that would remove the RP's capacity to resist the impulse to commit suicide. Any such attempts would be wholly down to the RP's voluntary actions and the High Court in Turner said that there was no oppression in ordering extradition where the RP's voluntary act put him at risk of dying." ([172]-[173])

15. The Judge noted that there was no evidence that cast doubt on Hungary's ability to discharge its responsibility to prevent the Appellant from committing suicide, and in the circumstances, it was sufficient to rely on the presumption that a member state of the EU would do so. Accordingly, the Judge held that the Appellant had failed to establish that his extradition would be unjust or oppressive as a result of his mental health difficulties.

The grant of permission to appeal and to rely on fresh evidence

16. The Appellant originally filed an application for permission to appeal raising a single ground under article 8 of the European Convention on Human Rights. That application was refused by Morris J on 12 January 2024 but renewed on 20 January 2024. On 21 February 2024, an Administrative Court Office Lawyer extended the Legal Representation Order to cover the preparation of a further psychiatric report by Dr Reid.

17. Dr Reid duly provided his Second Addendum Report on 3 April 2024. At a renewal hearing on 23 May 2024, Johnson J granted the Appellant permission to rely on the updated report and hospital records dated 2 February 2024 and to amend his grounds to advance the following ('the s.25 ground'):

> "On 31 August 2023, the judge in the lower court ordered extradition of the Applicant. Since extradition was ordered, the Applicant's mother died in January 2024. The Applicant's wife has entered a relationship with another man. Family proceedings for the Applicant's children were concluded in February 2024, and he lost custody of both children. They were previously a

> protective factor against suicide. On 2 February 2024, the Applicant was admitted to hospital following a suicide attempt. The Applicant has lost his access to his previous employment. His support worker has noted a deterioration in his mental health. Dr Reid noted that the Applicant's personality disorder led to impulsivity during times of high distress. This impulsivity could lead to fatal self-harm, which was beyond his control. In light of the new evidence, and significant loss of protective factors, … it would not be safe to now extradite the Applicant."

18. Johnson J granted permission to appeal on the s.25 ground. The Appellant abandoned reliance on article 8, and permission was refused on that ground.

The fresh evidence

19. Dr Reid's Second Addendum Report states that it should be read in conjunction with his original report and the first addendum report. The Appellant told Dr Reid that a lot had happened since he had last interviewed him on 1 August 2023: "*Since then, my children have been legally taken away, my mother has died, I still face extradition to Hungary*". The Appellant reported that he no longer had any contact with his children's mother. The children were being cared for by foster parents. He said that he has a zoom meeting with them once a week or once a fortnight. Although I note that an email from the Council indicates that the frequency going forward, at least for the next 3 months, is one 15-minute zoom call a month.

20. The Appellant told Dr Reid that his mother (who was living in Hungary) died suddenly of a heart attack on 26 or 27 January 2024. He reported (and his support worker confirmed) that before she died, he was having daily telephone contact with her. Shortly after his mother's death, he had the court hearing at which he was told his children would remain in the care of social services. He told Dr Reid that "*after this hearing he made an attempt to jump from the seventh floor balcony in the Court building, but security staff jumped on top of him and stopped him from doing so*". Dr Reid said the Appellant told him he was taking antidepressant medication which had initially been prescribed to him "*one year ago, following an attendance at hospital in similar circumstances to that just described*". As his living situation had changed, he was now taking the medication.

21. Dr Reid wrote:

> "**Mental State Examination on 19th March 2024**
>
> With regard to his mental state, this was very similar to how he presented at his last meeting with me. Both the interpreter and myself noted that in comparison to our first interview with him, his last two presentations have been better in that he [is] more focussed and can speak quite eloquently about his difficulties. He is no longer disordered in his thinking and jumping around in conversation. However, it's apparent that there is evidence of depressed mood (of a mild severity) and some degree of hopelessness, although clearly much of this is also reactive to his current situation. I could not identify any evidence of symptoms

> of psychotic mental illness. He does have frequent thoughts that his life is not worth living and again this is very much related to the issues caused by his current predicament and worries that he will have no future whatsoever if he were extradited to Hungary.
>
> He appeared well orientated in time place and person and his concentration and memory appeared grossly normal."

22. Dr Reid stated his opinion in the Second Addendum Report (in almost identical and effectively the same terms as he had in the First Addendum Report), as follows:

> "My opinions are unchanged with regard to his diagnosis and prognosis from those expressed in my original report and last addendum report. I think it is very likely that his difficulties with his mental health are best explained by them being the result of abnormal personality traits of an emotionally unstable type. It remains the case that, when he is exposed to stressors (as he clearly has been over the period that I have seen him), his mental state is likely to decompensate and he will be at increased risk of impulsive acts of self-harm. It appears that during such incidents, there may not be a clear intention to end his life, but such is the nature of his impulsivity that whilst it is more likely than not that the severity of injury will not be life threatening, there is always some risk that the severity of injury could potentially be life threatening."

Further application to admit fresh evidence

23. At the hearing of the appeal, Counsel for the Appellant, Mr Kherblane, applied to adduce further fresh evidence in the form of a further witness statement from the Appellant.

24. The appeal is brought under s.26 of the 2003 Act. The relevant conditions for a successful appeal in this case are in s.27(4) to the effect that:

> "(a) … evidence is available that was not available at the extradition hearing;
>
> (b) the … evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently…"

25. Section 27(4) establishes conditions for allowing the appeal, not for admitting evidence. Nonetheless, an important consideration when exercising the court's inherent jurisdiction to control its own procedure is the policy underpinning that provision: *Zabolotnyi v Hungary* [2021] UKSC 14, [2021] 1 WLR 2569, [57].

26. The principles regulating the admission of fresh evidence were discussed by Sir Anthony May, P. in *Hungary v Fenyvesi* [2009] EWHC 231 (Admin); [2009] 4 All ER 324, in the context of the similarly worded provision in s.29(4) of the 2003 Act. It must be shown that the fresh evidence is evidence which was "*not available at the extradition*

hearing", meaning that it was evidence which either did not exist at the time of the hearing, or was not at the disposal of the party wishing to adduce it and which he could not with reasonable diligence have obtained. In addition, it must be shown that the evidence would have been decisive in that it would have resulted in the judge ordering the applicant's discharge.

27. I am not persuaded that the Appellant's proof of evidence meets these requirements or that the interests of justice require its admission. First, some of the evidence existed at the time of the hearing and could with reasonable diligence have been obtained. He states:

> "[2] My two young children were taken into care on 10th January 2023.
>
> [3] I separated from my wife on 6th July 2023 after I had discovered she had been taking drugs and prostituting. She went on to have a relationship with her drug dealer." (Paragraph numbers added.)

These events were prior to the final extradition hearing. The Appellant could have given this evidence at the hearing.

28. Secondly, the Appellant's new statement is not signed, dated, or affirmed with a statement of truth.

29. Thirdly, even considering his evidence on the papers, aspects of it appear to be unreliable. In his First Addendum Report, Dr Reid recorded that the Appellant reported that he had to move out of the home in which he was living with his wife and his children in November 2022 because she made allegations against him of domestic violence, and he was not allowed to return when the charges were dropped. He said he was with his wife in the Sheridan Suite in Oldham at the start of 2023, but their relationship remained very volatile. For a period in late June 2023, when his wife was placed in a medically induced coma, he reported that he lived with her while her family came over to support her. But "*when her family left he reports his wife said she didn't love him anymore and went back to her drug dealer*". In saying in his new statement that they separated on 6 July 2023, the Appellant has neglected to say that they had been separated and living apart since November 2022, albeit it was only since July 2023 that there had been no contact. In addition, as I have said, the Judge had the opportunity to see him cross-examined and concluded that he was not a truthful or credible witness.

30. Fourthly, to a large extent, the new evidence that the Appellant gives is already before the Court in the form of Dr Reid's report of what the Appellant told him in their third interview. The Appellant's unsigned statement adds nothing of value to the evidence that is already before the Court. It would not have been decisive if it had been before the Judge.

The Law

31. Section 25 of the 2003 Act provides:

> "(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 in respect of whom the Part 1 warrant is issued 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."

32. The law is well settled and, for the most part, not in dispute.

33. The words "*unjust or oppressive*" are to be read in the sense used in *Kakis v Cyprus* [1978] 1 WLR 799, 782-3 (Lord Diplock). Thus, "*unjust*" is directed primarily to the risk of prejudice to the accused in the conduct of the trial itself. It is not suggested that the Appellant's extradition on four warrants (two of which are conviction warrants) would be unjust. As Lord Burnett of Maldon CJ observed in *Government of the United States v Assange* [2021] EWHC 3313 (Admin), [9]:

> "In this context, the word 'oppressive' relates to hardship to the requested person resulting from his physical or mental condition in the context of facing criminal proceedings and their consequences in another country …"

34. In *Assange*, the Divisional Court observed that the law relating to oppression and suicide risk for the purposes of s.25 and s.91 can be taken from the judgments of Aiken LJ in *Turner* and Sir John Thomas in *Polish Judicial Authority v Wolkowicz* [2013] 1 WLR 2402, and it "will rarely be necessary to look outside those two authorities for the applicable principles" (*Assange* [63]).

35. In *Wolkowicz* at [7]-[9], having reviewed the authorities, the Divisional Court approved Aikens LJ's succinct summary of the approach the Court should adopt, given in *Turner* at [28]:

> "(1) The court has to form an overall judgment on the facts of the particular case.
>
> (2) A high threshold has to be reached in order to satisfy the court that a requested person's physical or mental condition is such that it would be unjust or oppressive to extradite him.
>
> (3) The court must assess the mental condition of the person threatened with extradition and determine if it is linked to a risk of a suicide attempt if the extradition order were to be made. There has to be a "substantial risk that [the appellant] will commit suicide". The question is whether, on the evidence the risk of the appellant succeeding in committing suicide, whatever

> steps are taken is sufficiently great to result in a finding of oppression.
>
> (4) The mental condition of the person must be such that it removes his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying and if that is the case there is no oppression in ordering extradition.
>
> (5) On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression?
>
> (6) Are there appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the person's mental condition and the risk of suicide?
>
> (7) There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind."

36. In relation to preventative measures, the focus in this case is on the third of the three stages identified in *Wolkowicz* at [10], that is, "*when the requested person is received by the receiving state in the custodial institution in which he is to be held*". At the two earlier stages of being held in custody in the UK and being transferred to the requesting state, authorities within this jurisdiction have responsibility, and the Appellant did not seek to contend that the preventative measures would be insufficient to minimise any risk of a completed suicide attempt.

37. Mr Kherbane raised two disputes on the law. First, he took issue with the Respondent's submission that an assessment of whether extradition would be "*oppressive*" requires consideration of all the relevant factors, including, among others, "*the seriousness of the offence*". The relevant circumstances will vary from case to case and it is not necessary to enumerate them: *Assange* [73]. In this case, I consider that the nature and seriousness of the offences is a peripheral matter. But I reject Mr Kherbane's contention that, in principle, the gravity of the offence is incapable of being of any relevance in the assessment of whether, in all the circumstances, extradition would be oppressive.

38. The second, more pertinent dispute concerns the presumption that an EU country, which is a signatory to the European Convention on Human Rights, would discharge its responsibility to take proper measures to prevent suicide. Mr Kherbane submits that there is no presumption; it is always a fact-specific assessment. In support of this submission, he relies on *Magiera v Poland* [2017 EWHC 2757 (Admin), [32]-[36] (Julian Knowles J), *GS v Hungary* [2016] EWHC 64 (Admin) and *Zabolotnyi v Hungary*. In response, Ms Bostock relies on *Wolkowicz*.

39. In *Wolkowicz,* the Divisional Court specifically addressed the approach to be taken with respect to determining whether suitable measures are in place to prevent any suicide attempt by a requested person with a mental illness being successful. The Court observed at [10(iii)]:

> "… when the requested person is received by the requesting state in the custodial institution in which he is to be held, it will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary: see the authorities set out at paragraphs 3-7 of *Krokick and others v Several Judicial Authorities of Poland* [2012] EWHC 2357 and paragraphs 10-11 of *Rot* [*v Poland* [2010] EWHC 1820 (Admin)]. In the absence of evidence to the necessary standard that calls into question the ability of the receiving state to discharge its responsibilities or a specific matter that gives cause for concern, it should not be necessary to require any assurances from requesting states within the European Union. It will therefore ordinarily be sufficient to rely on the presumption."

40. The Judge concluded, applying *Wolkowicz*, that it was sufficient to rely on the presumption that Hungary would discharge its responsibilities to prevent the Appellant from committing suicide because there was no evidence casting doubt on Hungary's ability to do so (Judgment [174]). As there is no ground of challenge alleging that the Judge erred in law, or in concluding that there was no strong evidence to rebut the presumption, strictly, the argument Mr Kherbane has raised is not one that has been pleaded. But in any event, it is not a good point.

41. In *GS v Hungary* the Divisional Court held that an assurance from the Hungarian authorities providing guarantees as to the amount of personal space available to prisoners was sufficient to rebut the presumption arising from *Varga v Hungary* (14097/12) (2015) 61 EHRR 30 that persons subject to extradition to Hungary would be at real risk of being detained in conditions that violate article 3 of the ECHR. The Divisional Court emphasised that the decision of the Strasbourg court was focused on space; on the facts of the cases before it, the court had rejected the proposition that, leaving aside personal space, other features of the conditions in Hungarian prisons could in themselves amount to a violation of article 3.

42. In *Zabolotnyi* Lord Lloyd-Jones observed that the "*principle of mutual trust also applies to assurances given as to conditions in which a returned person will be held*" ([34]). He continued at [44]:

> "… it is clear that where the requesting state is a party to the ECHR and a member state of the European Union there is a presumption that it will comply with its human rights obligations and assurances given in support of those obligations, and that cogent evidence will be required to rebut that presumption … Even if the requesting state has lost the general presumption that it will comply with its obligations under article 3 in relation to its prison estate as a whole, it will still normally enjoy a presumption that it will comply with specific assurances given in individual cases …"

43. It is clear from *GS* that the presumption that Hungary, as an EU state and signatory to the ECHR, will act compatibly with the Appellant's article 3 rights is only disapplied

in respect of the space requirement. There is no basis for the contention that it is disapplied in respect of Hungary's discharge of its responsibility to take appropriate measures to prevent suicide by those held in custody. In any event, in this case the Respondent has given assurances as to the minimum personal space the Appellant will have at all times in detention, and more broadly that he will be kept in a prison environment that is compatible with the ECHR (among other measures). The presumption that the requesting state will comply with those assurances applies: *Zabolotnyi*.

44. Mr Kherbane's argument based on *Magiera* is a general one, not founded on the position of Hungary since Strasbourg's decision in *Varga.* In *Magiera*, Julian Knowles J held that where a defendant maintains, *inter alia,* that his extradition is barred by s.25 because of his medical condition, "*there must be an intense focus on what that medical condition is and what it means for him in terms of his daily living*" ([32]). The court must then assess the extent to which any adverse effects upon him and his condition which extradition and incarceration would have can be met by the requesting state providing medical care or other arrangements ([32]). The starting point is that in the case of an EU member state there is a rebuttable presumption that there will be medical facilities available of a type to be expected in a prison ([34]). "*From that starting point it might not be necessary to say very much more*" ([34]). But more detail may be required if "*the treatment or management of the illness or condition is more complex*" ([35]). In *Magiera*, the appellant's extradition was held to be oppressive by reason of his physical health, given the lack of information as to how the appellant, who had a stoma, would be able to care for himself in a hygienic and dignified way in prison in Poland.

45. Mr Kherbane submits that the Appellant's personality disorder is complex and therefore a case-specific assessment is required. But the focus is on the treatment or management of the physical or mental condition. Adopting preventative measures to safeguard prisoners who are at risk of self-harming or attempting to commit suicide is a conventional aspect of prison management. That is why, in the absence of strong evidence to the contrary, it will ordinarily be presumed that an EU receiving state will discharge its responsibilities to prevent the requested person committing suicide: *Wolkowicz*. The analysis in *Magiera* does not depart from or undermine the Divisional Court's judgment in *Wolkowicz*.

Submissions

46. Counsel for the Appellant, Mr Kherbane, submits that the Appellant suffers from an emotionally unstable personal disorder, marked by a tendency to "*act impulsively without consideration of the consequences, together with affective instability*". He also has ADHD which increases his impulsivity. Mr Kherbane emphasises the Appellant's recent loss of protective factors against suicide. He submits that since extradition was ordered the Appellant's mother has died, his wife has entered into a relationship with another man, family proceedings have concluded with loss of custody of his two younger children, and he has lost his access to his previous employment. His support worker refers to him "*fading away*", and the hospital records show he made a further suicide attempt on 2 February 2024. The triage note indicates he was in "*marked distress*" and states:

> "suicidal thoughts, wants to jump off roof of a building, asking in triage to have a lethal tablet or to be electrified. doesn't want to live anymore due to losing custody of children today. taken in by police who have left, with friend. Description in MH risk ax. pmh: prev suicide attempt states no formal MH diagnosis."

47. Mr Kherbane submits that the Appellant's mental condition is such that he is disabled from giving effect to the human instinct for self-preservation when experiencing high levels of distress. He will inevitably experience high levels of distress when extradited. This distress is compounded by the recent, cumulative, and adverse impact of a rapid loss of protective factors, resulting in the Appellant "*fading away*" and being in despair.

48. Mr Kherbane takes issue with the Judge's finding that the Appellant is "manipulative" (Judgment, [169], [172]), if by that she meant that he would pretend to be distressed to get what he wanted. He submits that is not consistent with the medical evidence regarding his impulsivity as a result of his personality disorder.

49. In the circumstances, he submits the Appellant's extradition will lead to impulsive acts of self-harm, in respect of which the Appellant is unable to exercise control. And, according to Dr Reid, there is *always* a risk these could be fatal. Although one act of self-harm may not, by itself, be fatal, the overall risk from repeated acts of self-harm when the Appellant finds himself extradited and experiencing severe distress means that there is a real risk he will, without impulse control, end his life.

50. There has been no engagement from the Judicial Authority with the Appellant's mental health, despite the length of the period that they have been aware of his personality disorder. Dr Andras Kadar's evidence was that there was a shortage of psychologists in the Hungarian prison system. The Court should reject the contention that a presumption applies in respect of preventative measures and conclude that there is a very high likelihood the Appellant will succeed in ending his life if he is extradited. Therefore, his extradition would be oppressive.

51. Ms Bostock emphasises that the Judge applied the appropriate law and undertook a careful analysis of the evidence before her. The Appellant's case is not that she was wrong, it is that the fresh evidence changes the position. Ms Bostock submits it plainly does not. Dr Reid's second addendum report makes clear that his opinions are unchanged with regard to his diagnosis and prognosis and that the Appellant's presentation and mental state was very similar to when he had last seen him.

52. Ms Bostock contends that the difference in the Appellant's life circumstances is not as significant as pleaded. His older child lives with her maternal grandparent in Hungary, having been placed with her by the Hungarian authorities, and was not in the Appellant's care when he was arrested on the warrants or at the time of the hearing. The Appellant's two younger children were removed from his and his former partner's care in January 2023 and placed in foster care (Judgment [245(i)]. He was also already separated from his former partner by the time of the extradition hearing. Dr Reid's First Addendum Report recorded that he had separated from his former partner in November 2022, moving out of their home. By 1 August 2023, when Dr Reid interviewed the Appellant, the latter was reporting that "*his wife said that she didn't love him anymore and went back to her drug dealer*", and he was no longer in contact with her.

53. The Appellant's mother's death is said to have occurred in January 2024, since the extradition hearing, and so inevitably it was not a factor of which the Judge was aware. But the Appellant's evidence at the extradition hearing was that he had no relationship with her (paragraph 6 of his proof). He told the Judge that he had not lived with his mother since 2010 and he had not been in touch with her for many years, until after his father's death in 2019 (Judgment [154], [156]).

54. In any event, the life changes that had occurred did not affect Dr Reid's opinion. Therefore, Ms Bostock submits, it cannot be said that the further report would have changed the mind of the District Judge. In its skeleton argument, the Respondent contended that it remains the case that the Appellant does not suffer from any mental health condition. Ms Bostock did not go that far in her oral submissions, albeit she emphasised that there is not even a formal diagnosis of personality disorder. But she maintained that his threats and self-harming actions are voluntary acts, made in frustration when he feels thwarted. It is not Dr Reid's opinion that the Appellant is so mentally unwell that he lacks the capacity to resist suicide. On the contrary and as the District Judge found, he decides (albeit impulsively) to harm himself when he is dissatisfied with his circumstances.

55. Ms Bostock submits that, on the evidence, this case falls well short of oppression. An individual cannot avoid criminal responsibility simply by asserting an intent to end their life. This Appellant falls squarely within the category of someone who does not have a mental condition that removes his capacity to resist the impulse to commit suicide, but rather it would be his own voluntary act.

56. Furthermore, there is a presumption that adequate protection would be in place in Hungarian prisons in any event. There was evidence before the Judge of a shortage of psychologists (but not psychiatrists: Judgment [45]) and substandard physical conditions in mental health treatment facilities coming from open source evidence dating back to 2013-2016 (Judgment §46)], but there is no "strong evidence" or recent evidence to suggest Hungary would not provide adequate protection against self-harm to the Appellant such as would be required to rebut the presumption.

Decision

57. In my judgment, it is clear that the fresh evidence, if it had been before the Judge, would not have resulted in her finding that it would be unjust or oppressive to extradite the Appellant. The Judge accepted Dr Reid's opinion as to the diagnosis and prognosis, and that remains unchanged.

58. I accept that the Appellant has a "*mental condition*" for the purposes of s.25. Although Dr Reid refrained from making a "*firm diagnosis*", his consistent opinion, having interviewed the Appellant on three occasions over a period of two years, is that "*the likelihood is that he has a personality disorder*", primarily of an "*emotionally unstable*" type.

59. But the Judge was not wrong – indeed, she was clearly right – that on the evidence, in particular Dr Reid's assessment, there was not a substantial risk that the Appellant will commit suicide. The fresh evidence does not change the position. Dr Reid's assessment is unchanged and, in my view, falls far short of demonstrating that there is a substantial risk that the Appellant will commit suicide. He did not have a clear intention to end his

life during either the incident on 9 May 2023 or 2 February 2024. The Appellant's own assertion that he would rather die than return to Hungary is not, and has not been found by Dr Reid to be, reflective of any clear intention to end his life.

60. Such risk to the Appellant's life as exists arises from the possibility that he may engage in acts of self-harm, as opposed to any real risk he will make a genuine and concerted attempt to kill himself. It is unlikely, not least having regard to his past behaviour, that any such self-harm would result in injury of such severity as to be life-threatening. But Dr Reid considers that there is "*always some risk that the severity of injury could potentially be life threatening*". The point being that even if the Appellant attempts, for example, to cut himself superficially, as he has reportedly done in the past, there is "*some risk*" that he could inadvertently inflict a life-threatening injury on himself. This risk is not substantial.

61. I recognise that there have been some significant changes in the Appellant's life since the extradition hearing. However, the Appellant and his wife had already separated, and she had already begun a relationship with another man, by the time of the extradition hearing. His relationship with his wife had been a protective factor, albeit it was also a source of stress, but it was a loss that had already been taken into account by Dr Reid in his First Addendum Report and evidence at the extradition hearing.

62. Insofar as the Appellant's relationship with his two younger children was also a protective factor, he had already ceased to live with them from November 2022, and they had been placed in foster care since January 2023. I accept that the final decision of the family court was a further, distressing blow to the Appellant. But the evidence of Dr Reid at the extradition hearing was that he had already, by then, suffered the loss of his children being taken into care. Dr Reid's evidence at the extradition hearing was not that his relationship with them or hope of regaining custody was a protective factor.

63. The Appellant's relationship with his mother was also not treated as a protective factor by Dr Reid in his evidence at the extradition hearing. At that stage, the evidence was that he had no relationship or contact with her. I accept that since the extradition hearing, prior to his mother's death, he was in regular contact with her, and her death is a sad loss to him. But it has not altered Dr Reid's opinion. It is not the loss of a protective factor that existed at the time of the extradition hearing, but of one which has both developed and been lost since that hearing.

64. The Appellant has also made a further threat that he would kill himself by jumping from a height, in almost identical circumstances to those in May 2023, which resulted, again, in a brief visit to hospital followed by his discharge. Both suicide attempts have been considered by Dr Reid and taken into account in his assessment of the risk to the Appellant's life.

65. The lack of a substantial risk that – even leaving aside any preventative measures - the Appellant will commit suicide if he is extradited is sufficient to dispose of the appeal. Nevertheless, I will address the other questions that would arise if the risk were substantial.

66. Does the Appellant have the capacity to restrain himself? The Judge, having heard from the Appellant directly, as well as from Dr Reid, considered that he did, and that any attempt on his life would be his own voluntary act. The ground of appeal does not

challenge her conclusion on the evidence before her. In my judgment, there is nothing in the fresh evidence that alters the position. Dr Reid's diagnosis and opinion is unchanged and stated in almost identical terms in his Second Addendum Report.

67. Finally, even if the risk to the Appellant's life were otherwise considered to be substantial, preventative measures will reduce the risk. While the Appellant is in custody in this jurisdiction, or *en route* to Hungary, responsibility for preventative measures will lie with UK authorities. Mr Kherblane did not suggest that they would not take appropriate steps to minimise the risk. As regards the period beginning on the Appellant's reception into the custody of the requesting state, for the reasons I have already given, I consider that the presumption that the Respondent will discharge its responsibility towards the Appellant has not been displaced. The Judge analysed and applied the law correctly in concluding that preventative measures would be in place. The single ground of appeal does not challenge her analysis, and there is nothing in the fresh evidence capable of leading to a different conclusion.

68. On the evidence, including the fresh evidence, the risk of the Appellant succeeding in committing suicide - or more accurately, in this case, inadvertently killing himself through acts of self-harm - is not sufficiently great to result in a finding of oppression. Accordingly, the appeal is dismissed.

69. Nevertheless, it is important that all those with responsibility for the Appellant's detention should have a proper understanding of his mental condition and the risk of him injuring or killing himself. I will therefore order that his medical reports should accompany him.