Neutral Citation Number: [2021] EWHC 1297 (Admin)

Case No: CO/4659/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/05/2021

Before :

THE HON. MR JUSTICE LANE,

- -

Between :

TARIK AL-AWA	**Appellant**
- and -	
District Court in Ostrava, Czech Republic	**Respondent**

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- -

Mr J Stansfeld (instructed by **Sonn McMacmillan Walker**) for the **Appellant**
Ms H Burton (instructed by **Extradition Unit, International Justice and Organised Crime Division, CPS**) for the **Respondent**

Hearing date: 21 April 2021

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Judgment

Mr Justice Lane :

1. The Appellant appeals against the judgment of District Judge Zani who, on 9 December 2020, ordered the appellant's extradition to the Czech Republic. Permission to appeal was granted on two grounds; namely, that the District Judge was wrong to conclude that the extradition of the appellant was not oppressive by reason of the appellant's health (section 25 of the Extradition Act 2003) and that the District Judge was also wrong to conclude that extradition was not a disproportionate interference with the appellant's Article 8 ECHR private and family life rights (section 21 of the 2003 Act).

2. The appellant's extradition is sought by the Czech Republic, pursuant to a European Arrest Warrant ("EAW") issued on 13 August 2019 by the District Court in Ostrava. The EAW was certified by the National Crime Agency on 19 January 2020 and Part 1 of the 2003 Act accordingly applies. The EAW is a conviction warrant, based upon the judgment of the District Court dated 13 March 2017 and an order of 13 June 2019 to bring the appellant to serve his sentence of 2 years' imprisonment in respect of 11 offences of fraud.

3. Between March and July 2016, the appellant made false representations in order to obtain credit. The total amount of credit applied for amounted to the equivalent of approximately £20,808 and the total loss actually caused was approximately £10,937 according to current conversation rates.

4. The appellant's sentence was initially suspended for a period of 3 years. The appellant was required to repay the damage. The suspended sentence was, however, activated because, during the period of its suspension, the appellant committed a further offence, for which he was convicted on 22 February 2018. This offence concerned the unauthorised procurement, counterfeiting and alteration of a means of payment. The appellant was represented by a lawyer when the suspended sentence was activated on 8 January 2019.

5. The appellant had also been convicted in November 2017 of embezzlement of a vehicle, being a hire car which the appellant leased and then handed over as security interest in Hungary. For that offence, the appellant was sentenced to 300 hours of community service and fined CZK 25,000.

6. Prior to the activation of the suspended sentence, the appellant had been in contact with the court in the Czech Republic. In respect of the November 2017 offence, he paid the fine on 15 October 2018 and completed the community service by 7 January 2019.

7. The appellant had, at one point, told the court in the Czech Republic that he wanted to work in the United Kingdom, owing to the higher salaries available there, which would enable him to earn money to pay off his debts. According to the appellant's statement, he had initially visited the United Kingdom in 2015 and moved there in 2017. The District Judge noted that the appellant had subsequently spent periods of time in the Czech Republic in 2017, 2018 and 2019. It was during one of those periods that the appellant had completed the 300 hours of community service.

The August 2020 hearing

8. Having been arrested on the EAW on 19 February 2020, the appellant appeared before Westminster Magistrates Court the following day. He did not consent to extradition. Accordingly, an extradition hearing took place before District Judge Zani on 24 August 2020. The case of the appellant was that his extradition would be oppressive, given his health, and that it would not be compatible with his Article 8 Rights.

9. The appellant gave evidence at the hearing. He said he had been born in the Czech Republic in 1997 but had moved to Syria immediately after he was born. There, he lived in Damascus until he was 7 or 8 years old. He and his family had, however, to leave Syria around 2004/2005, and they returned to the Czech Republic. During his time at school in the Czech Republic, the appellant said that he would get into fights with other students all the time. They would make comments about him because he was a Muslim and had returned from the Middle East. He could speak five languages, Arabic, Russian, Czech, English and Slovakian, as well as some Polish. He described himself as very knowledgeable in international politics.

10. When he was fourteen, the appellant said he had been formally diagnosed with Asperger's Syndrome, ADHD and depression. Although no longer suffering from ADHD, the appellant still had to live with Asperger's Syndrome, which had an effect on his daily life. He did not like talking to people and struggled to cope when it was too noisy. He found making eye contact very difficult, being able to do so only with people he trusted. He struggled to sleep unless he had a window open.

11. In the Czech Republic, the appellant said that he had spent 3 months in a psychiatric unit for children when he was 11. His mother would visit only to change his clothes. He spent some four or five months in the same hospital when he was 12, and some 6 months when he was 14. The appellant said that there were "some bad kids in the hospital, and it was a frightening experience". At times he had been tied to his bed and given injections that made him sleep. He felt abandoned by his own family.

12. In the Czech Republic, the appellant said he tried many jobs but these did not work out. They included working in his uncle's kebab shop and in a pub washing dishes. The appellant said his "mother kicked me out of her home when I was 18. I had a very difficult time in Czech Republic and I was frequently stopped by the Police".

13. After arriving in the United Kingdom, the appellant's first job was in a warehouse but that employment ceased when the company moved to Sheffield (the appellant lived in Burnley). He had not gone to Sheffield because he had a girlfriend who asked him not to do so. The appellant had made friends in the United Kingdom whom he considered to be like family. The appellant said he was trying to obtain tablets from the doctor for his depression, since the extradition proceedings had made him lose almost two stone in weight and become very concerned. He was scared about going back to the Czech Republic: "I did not have a good experience there and I am very happy in the UK". The appellant was scared about going into detention following his experiences in the hospital, "as it will be like the hospital where I was abandoned by my family. I feel this will exacerbate my illness and I am scared about whether I will be able to cope in a custodial environment and being locked in a cell".

14. Before the District Judge, there were two psychiatric reports on the appellant, written by Dr Helen Youngman, a consultant forensic psychiatrist. Dr Youngman gave evidence by remote means and was cross-examined, as well as answering questions from the District Judge.

15. In her first report, Dr Youngman set out her conclusions as follows:-

> "2. Mr Al-Awa provides a history and clinical presentation consistent with Asperger's Syndrome, though more specialist psychological assessment is recommended. He also presents with symptoms currently of a moderate depressive episode.
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> 3. It is my opinion that if Mr Al-Awa's extradition were to be granted that his risk of self-harm and suicide would increase due to his absolute reluctance to return to the country in which he experienced prolonged verbal and physical abuse at the hand of his mother, the education system and the health care system."

16. Dr Youngman noted that the appellant had come to the United Kingdom originally without any intention of staying but had enjoyed his time, stating that he "found peace in life". He attended a mosque and found comfort in making friends through his religion. So far as his psychiatric history was concerned, the appellant described being taken by his mother to a psychiatrist around the age of 8 or 9 after problems at school had started, together with his getting into trouble at home. The appellant described his time in hospital as "very hard", being in a room with six other children who were "next level horrible". He then described having further admissions including, when he was 13, being in hospital for six months, which was when he had been diagnosed with Asperger's Syndrome. He continued to be "abused by staff", being restrained approximately every two weeks, which he considered to be a disproportionate response to his behaviour. After he "gave up protecting myself", he was discharged. After one further admission when he was aged 14, he had no further admissions to hospital.

17. The appellant told Dr Youngman that as a child he found it much harder to control his temper than he did now. Although prescribed medication for ADHD, the appellant stopped taking this when he was aged about 16 and thereafter felt much better.

18. The appellant reported a decline in his mood in the year or so before he left the Czech Republic, experiencing feelings which Dr Youngman regarded as suggestive of panic attacks. They ceased when he came to the United Kingdom.

19. When examined on 9 July 2020, Dr Youngman found that the appellant reported some depressive symptoms. His concentration was, however, good. He denied any current suicidal ideation. He spoke of his future plans, if he were to remain in the United Kingdom. These would comprise studying and gaining employment "but he spoke about his resolute refusal to return to [the Czech Republic] given the treatment he suffered there and the difficulties he had. He said he could not manage a return there and would end his life rather than go back".

20. The appellant told Dr Youngman that he managed his symptoms of anxiety by adhering to a strict daily routine. She considered that he had good insight into his current mental health. He appreciated "how his behaviour when he was younger was markedly different to what it is now". He did not consider that his ADHD continued into adulthood. He "spoke openly about his cannabis and was aware of the potential consequences of long-term use on his mental health but considered his current use low level". It is relevant to observe here that the appellant received a caution in the United Kingdom for cannabis cultivation.

21. Dr Youngman found no evidence suggestive of adult ADHD. In view of what the appellant had described to Dr Youngman, regarding his detention in the Czech Republic and psychiatric hospitals, as well as verbal and physical abuse outside the health care situation, where he was victimised and taunted by his peers for being a Muslim, Dr Youngman considered that the appellant had suffered panic attacks prior to his move to the United Kingdom. She found, however, that the appellant "has no symptoms currently that would meet the threshold of PTSD". At the time of writing her first report, Dr Youngman had not had access to any of the appellant's medical records from the Czech Republic. She considered that there were "evident traits" of Asperger's Syndrome but recommended assessment by a psychologist with expertise in the diagnosis of pervasive developmental disorders.

22. At the end of her first report under the heading "Legal Issues", Dr Youngman said this:-

> "60. Should Mr Al-Awa return to the Czech Republic I would consider it highly likely that his anxiety and low mood would substantially deteriorate. He associates the Czech Republic with a number of highly traumatic memories and a time of his life when he was very young and impressionable. His experiences there were so negative he has sought a new life for himself in the UK and should he return as a result of his extradition I would consider him at high risk of self-harm or suicide. By his account when he was initially arrested and he believed he would be extradited at that point, he was so distressed that he tied a ligature around his neck in a police cell. Whilst I have not seen any records from his time in custody to corroborate this, if it is considered to be true then I would view it as strong evidence of the measures Mr Al-Awa would take to avoid extradition.
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> 61. Should Al-Awa's extradition be ordered and he is safely received into custody in the Czech Republic I would consider him to be a long term risk of self-harm and suicide. He would require close monitoring from mental health practitioners and I would suggest that he would require pharmacological and psychological treatment for his depression, which I would expect to increase in severity in a custodial setting."

23. Following receipt of medical records from the Czech Republic, Dr Youngman prepared a second psychiatric report (20 August 2020). This confirmed the diagnosis of Asperger's Syndrome, describing it as 'characterised by the same type of qualitative abnormalities of reciprocal social interaction that typify autism, together with a restricted, stereotype, repetitive repertoire of interests and activities. It differs from autism primarily in the fact that there is no general delay or retardation in language or in cognitive development".

24. Dr Youngman confirmed her diagnosis in her initial report that the appellant "is also suffering from a moderate depressive disorder". She saw, however, "no evidence of any ongoing ADHD symptoms, now that he is matured, and I was not struck by any prominent personality pathology, though appreciate this was noted in his medical records".

25. Dr Youngman's second report concluded as follows:-

> "20. Individuals with mental health disorders can be considered vulnerable in custodial settings. Though everyone can tolerate situation (sic) differently, those with Asperger Syndrome will find changes in their established routine very distressing, particularly during the initial adjustment period. They also have difficulties in their social interactions and communication and therefore a prison environment could be particularly challenging when there are expectations to share cells and associate with peers, over which they have limited control. This may result in

> increasingly challenging behaviours, aggression, impulsivity or a deterioration in mood.
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> 21. Whilst I acknowledge that Mr Al-Awa has made successful changes to his routine previously including relocating to UK, it would be the return to the country that he associates with such a difficult and traumatic period of his life that is likely to be the most destabilising factor, compounded by a restrictive and rigid custodial setting. By his own account his mental health and behavioural difficulties have significantly abated since being in the UK and returning to the Czech Republic will be traumatising.
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> 22. Mr Al-Awa's presentation is complicated by a current moderate depressive episode. If Mr Al-Awa were to be extradited he would likely consider this a catastrophic outcome and one, which based on his previous experiences as well as his mental health needs, he would deem unmanageable. I will consider his risk of suicide to be high; the rigidity of thinking often seen in Asperger's Syndrome in combination with his already low mood would likely result in him being unable to see how he can survive an extradition and considering that as his only solution.
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> 23. If his extradition is ordered, Mr Al-Awa will require close monitoring and it will be crucial for his mental health needs and suicide risk to be communicated to the receiving authority/establishment"

26. In cross examination, Dr Youngman acknowledged that the structure of the prison regime might assist the appellant, given that those with Asperger's Syndrome seek to manage their condition by following strict regimes that allow them to control their day-to-day activities. However, there would be issues regarding cleanliness and hygiene, since those with Asperger's Syndrome often have obsessive tendencies around these activities and, in prison, the appellant would have limited ability to control his environment.

27. The District Judge asked Dr Youngman whether the fact that the appellant would be detained in prison, rather than in a hospital, would have any impact. Dr Youngman did not consider this to be the case. The District Judge also sought to establish whether Dr Youngman had been aware of any attempts by the appellant to self-harm. Dr Youngman responded by referring to the "ligature incident" but it was established that she had not seen the relevant custody records.

Further information

28. At the conclusion of the August 2020 hearing, District Judge Zani announced that he would be assisted by the provision of further information; namely:-

> (a) information about what occurred in custody in the United Kingdom after the appellant was arrested, given Dr Youngman's statement that the appellant had told her he was so distressed that he had tied a ligature;

(b) information on the details of the additional offences committed in the Czech Republic, which did not form the basis of the EAW;

(c) further information as to what, if anything, the Czech authorities could do to manage appropriately the appellant's issues, if he were extradited; and

(d) whether the appellant might serve his sentence in the United Kingdom.

29. There does not appear to have been any relevant response to item (d) above. As for item (a), it emerged that the custody record did not refer to any incident in which the appellant tied a ligature.

30. The further information concerning additional offences (item (b)) disclosed that, prior to 15 November 2017, the appellant had procured a payment card without the consent of the authorised card holder. The appellant was sentenced to a financial penalty. A failure to pay that penalty would have required the appellant to serve five months imprisonment. The appellant paid the penalty.

31. In respect of the request for further information as to what the authorities in the Czech Republic could do to manage the appellant's difficulties arising from the Asperger's Syndrome (item (c)), Judge Skařupová replied from the Czech Republic to say that the questions fell more within the scope of the prison service, rather than the judiciary. She nevertheless confirmed that every Czech prison/penitentiary has a counsellor to help and guide prisoners through their problems. Each prison/penitentiary also has a medical facility. Details were provided of activities to re-socialise prisoners, including individual counselling with psychologists, social workers and educators, in order to resolve "stressful situations". Judge Skařupová said that there was no reason to doubt that the Czech prison system would be able to cope with the appellant's diagnosis. The Czech Republic "stands strong in upkeeping the principles of fundamental human rights and freedoms". She saw no reason why the appellant should not be surrendered to the Czech Republic to carry out the punishment imposed upon him by law. Importantly, Judge Skařupová said that Czech law "after all, does regulate situations where a convicted person is unable to serve a custodial sentence".

32. Following further enquiries, information was supplied in October 2020 by Doctor Zizka, Director of the Prison Service of the Czech Republic (Division of Health Service). Having described in detail the nature of Asperger's Syndrome, the Director said that a person with a known diagnosis of Asperger's Syndrome "may be provided with a frequent intensive psychiatric outpatient care with a background of inpatient care (hospitalisation and psychiatric inpatient ward of Brno secure prison hospital is possible) already from the beginning of execution of sentence of imprisonment, namely including necessary medication". Professionals would be able to devote "increased professional care including care of psychologist to a patient with such diagnosis in … close co-operation with [the] medical service". Emphasis would be placed on "a proper location or as the case may be accommodation of convict and on choice of group". In addition, "a general practitioner as well as an addictionoligist (sic) if necessary will devote increased attention to the patient. The named person may be ranked among frequently observed possible objects of violence or otherwise threatened persons in case of indicating (sic)". It would be necessary for relevant medical documentation with a detailed diagnosis of Asperger's Syndrome or a proposal of measures to be provided to

the prison service, when the appellant is handed over to begin his sentence of imprisonment in the Czech Republic.

The November 2020 hearing

The part-heard hearing before District Judge Zani resumed on 12 November 2020. Counsel for the appellant objected to any submission that the "ligature incident" did not occur, since this had not been suggested to the appellant during his oral evidence. Counsel for the respondent clarified that her submission related to the fact that there was no independent evidence of the ligature incident having occurred. Neither counsel nor the District Judge indicated that the appellant should be recalled to give evidence.

The District Judge's judgment

33. At paragraph 17 of his judgment, District Judge Zani found the information from Judge Skařupová and Dr Zizka, demonstrated that "not only are the Czech prison services aware of the issues faced by inmates suffering from the Asperger's Syndrome condition, but also that they have measures in place to adequately deal with any related issues that may arise for Mr Al-Awa while he is held within their prison estate".

34. Beginning at paragraph 20, the District Judge spent some time examining the circumstances in which the appellant came to the attention of the police in Burnley, when they searched premises being used as a cannabis factory. The judge then proceeded to summarise the evidence given on 24 August 2020 by the appellant and Dr Youngman.

35. At paragraph 47, the District Judge said that "by his account to [Dr Youngman] when [the appellant] was originally arrested and thought he would be extradited, he was so distressed that he tied a ligature around his neck in the police cell". At paragraph 60, the District Judge noted that information regarding the ligature incident "was self-reported by [the appellant] and there is no corroboration at all to support that account". At paragraph 61, the District Judge observed that the custody reports contained no reference to that episode having occurred.

36. At paragraph 65, the District Judge found the appellant had had no issues returning to the Czech Republic in 2017, 2018 and 2019, including attending court on 15 November 2017 to be sentenced for the offence of "embezzlement". The appellant had also carried out the entirety of 300 hours community service unpaid work in the Czech Republic, completing this on 7 January 2019. This led the District Judge to conclude that the appellant's "issues appeared to relate to a return to a custodial environment in that country".

37. At paragraph 66, the judge noted there was a rebuttable presumption that the requesting country would provide necessary medical treatment whilst the defendant is in its custody. The authority for this proposition was Mikolajcykv v Poland [2010] EWHC 350(3) (Admin). At paragraph 16 of the judgment in that case, Ouseley J observed that the threshold for showing it would be oppressive to extradite an individual by reason of

their physical condition was "necessarily a high one" and that it "is not necessary for the requesting State to demonstrate that it will replicate the conditions which the appellant enjoys, either in prison in the United Kingdom or out of prison in the United Kingdom". At paragraph 17, Ouseley J held that it "is of course possible that treatment would be less satisfactory… than in the UK but the question is whether the difference in treatment would mean that extradition is oppressive. It is for the appellant to demonstrate that that is so".

38. At paragraph 68, the District Judge concluded that the appellant's health issues had "not reached the necessary threshold so as to block this extradition request". At paragraph 69, the District Judge held that the present case was not one where the individual was incapable of resisting the impulse to try to end his life. The District Judge noted, however, that the court could still find it oppressive in terms of section 25 to extradite the appellant, even if this hurdle were not successfully surmounted.

39. The judge observed at paragraph 71 that the Czech authorities were clearly familiar with the appellant's mental health difficulties, having received the reports from Dr Youngman, as well as some of the appellant's earlier medical records. At paragraph 72, the District Judge found he was satisfied that the appellant would receive adequate assistance and treatment upon and after return and therefore concluded that extradition would not be oppressive or unjust within the terms of section 25 of the 2003 Act.

40. At paragraph 73, the District Judge considered that there was a considerable overlap between the section 25 and Article 8 challenges. He therefore referred to paragraphs 89 to 108 of his judgment "as being relevant to my decision to dismiss this section s.25 challenge". In undertaking the Article 8 balancing exercise, the District Judge included, amongst the factors said to be in favour of refusing extradition, the appellant's mental health issues, "which are said to be untreatable". In his analysis of the factors, weighing for and against extradition, the judge said, at paragraph 102, "I regard the evidence provided by [the appellant] that he tied a ligature around his neck while in police custody in Burnley after arrest as being wholly unreliable. It is uncorroborated by any police note in the detained Custody Record covering the period of his detention prior to arriving in this court." At paragraph 103, the District Judge indicated he was aware that Dr Youngman had said "if the ligature incident was thought to be true, it demonstrated the lengths to which [the appellant] would go to avoid extradition. The only other mention of any act of self-harm is said to be superficial scratches to his arms when he was in court".

41. At paragraph 104, the District Judge observed that, in the light of the appellant's returns to the Czech Republic in 2017, 2018, and 2019, it was a return to a custodial environment in that country which was said to be likely to cause a potentially serious deterioration in his mental health. The judge noted, however, that the appellant's earlier experiences of a detained environment "did not occur within the Czech prison estate but in a psychiatric hospital where he was detained on a number of occasions when he was a child".

42. Beginning of paragraph 105, the District Judge analysed the judgment of Laing J in XY v Netherlands [2019] EWHC 624 (Admin). In that case, the Dutch authorities sought the return of the appellant to serve a sentence of imprisonment. The unchallenged evidence was that XY had been anally raped whilst imprisoned in the Netherlands (prior to being released part- way through the sentence for which his return was being sought).

The evidence showed that XY was suffering from PTSD, anhedonia, weight loss and depression. He was taking prescribed anti-depressants. He had previously made two attempts to end his life. More recently, he had returned to his apartment to find that his flatmate had committed suicide. It was submitted that XY would be at high risk of completed suicide by reason of his mental frailties, coupled with the fact that he would be returned to the exact same environment where his abuse had occurred. In accepting those submissions, Laing J had found that the facts of the case were "unique" (paragraph 52 of her judgment).

43. In the present case, by contrast, the District Judge found at paragraph 108 that the appellant's mental health had improved in recent years and it was not said that he was currently taking any medication or attending any medical professional for assistance. He had also been able to work when it had been available to him.

44. At paragraph 115, the District Judge held that "importantly, save for the ligature incident (which I am not persuaded occurred) Dr Youngman has not seen evidence of any attempt by [the appellant] to attempt to self-harm or take his own life. I am satisfied that there is no persuasive evidence that [the appellant] has, to date, attempted to end his life or to seriously self-harm".

45. After considering a number of other findings regarding the evidence of Dr Youngman, the District Judge said this:-

> "122. I consider it appropriate to add that during closing submissions when it was pointed out that the cell at Burnley police station was covered by CCTV and that no incident of [the appellant] having tied a ligature was recorded nor was there anything to that effect noted on the Custody Record, [the appellant] is then said to have given instructions which suggested that, upon reflection, he thought that this incident took place in Wandsworth prison with the use of a bed sheet. This information appears to have been a hasty and clear shift by [the appellant] in an attempt to introduce a different explanation regarding the purported `ligature incident` when it was clear that his earlier explanation was uncorroborated (and likely to be disbelieved).
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> 123. This court notes that : (i) this 2nd `Wandsworth ligature`` suggestion (but completely uncorroborated) explanation is contrary to the information he had provided to Dr Youngman and as has been confirmed in his adopted proof of evidence. (ii) there is nothing in the notes from Wandsworth prison records to confirm that any such incident took place there.
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> 124. Albeit he was placed on an open ACCT whilst at Wandsworth prison, the entirety of his 4 to 5 day stay there appears to have passed without incident.
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> 125. I did not find [the appellant] to have been a totally honest witness in the evidence given to this court. I find that he tailored certain aspects of his testimony to best suit his purposes.

> Examples : (i) This is perhaps best highlighted by his evidence in respect of the `ligature`. (ii) He initially appeared not to recall attending the Czech court hearing in March 2017 at all, but when pressed, remembered without any apparent difficulty. (iii) In his proof of evidence he professed an intention of wanting to obtain medication to help with his sleeping difficulties from his GP, whereas in evidence he said that he was, in fact, taking Diazepam given to him by a friend with no mention of having pursued any attempts to secure authorised medication from his GP."

After a number of further findings, including that the appellant had attended court in the Czech Republic on 9 November 2017, when it was evident that he could then have been sentenced to imprisonment; and that the appellant enjoys a good relationship with his father, who is in the Czech Republic and to whom he talks "all the time", the judge concluded that there were no bars to the extradition request. He therefore ordered the appellant's extradition.

Case law

46. At this point, it is necessary to examine the relevant case law. Some of this has been encountered already, in the context of the District Judge's judgment. I shall look first at the cases concerning injustice and oppression.

47. In Government of the Republic of South Africa v Dewani [2013] EWHC 842 (Admin), the Divisional Court was concerned with section 25 and section 91 of the 2003 Act. Section 91 provides that a judge must order a person's discharge or adjourn the hearing if the physical or mental condition of the person concerned is such it would be unjust or oppressive to extradite him. The Divisional Court held as follows:-

> "73. In our view, the words in s.91 and s.25 set out the relevant test and little help is gained by reference to the facts of other cases. We would add it is not likely to be helpful to refer a court to observations that the threshold is high or that the graver the charge the higher the bar, as this inevitably risks taking the eye of the parties and the court off the statutory test by drawing the court into the consideration of the facts of the other cases. The term "unjust or oppressive" requires regard to be had to all the relevant circumstances, including the fact that extradition is ordinarily likely to cause stress and hardship; neither of those is sufficient. It is not necessary to enumerate these circumstances, as they will inevitably vary from case to case as the decisions listed at paragraph 72 demonstrate. We would observe that the citation of decisions which do no more than restate the test under s.91 or apply the test to facts is strongly to be discouraged. There is a real danger that the courts are falling into a similar error as courts fell into in relation to s.23 of the Criminal Appeal Act 1968 and as described by the Lord Chief Justice in *R v Erskine* [2009] 2 Cr App R 29, [2009] 2 Cr App Rep 29, [2009] EWCA Crim 1425, [2010] Crim LR 48.

> 74. The only issue that could arise is whether the words "unjust or oppressive" are to be read in the sense used in cases such as *Kakis* or to be read in the context of Article 23.4. We agree with the observations of Maurice Kay LJ in *Prancs* at paragraph 10 that the words are plainly derived from *Kakis.* The Parliamentary history of the Extradition Bill suggests that the provision was introduced into what is Part II for the reasons we have given at paragraph 67 and then the Bill was amended to add the provision to Part I. Although that may not assist in determining whether s.25 (and hence s.91) is to be read as reflective of Article 23.4, the use of the term "unjust or oppressive" plainly indicates that Parliament intended its own test."

48. In Kakis v Government of the Republic of Cyprus [1978] 1 WLR 799, the House of Lords held that "unjust" was a term primarily directed to the risk of prejudice to the accused in the conduct of the trial itself. The expression "oppressive", on the other hand, was directed to hardship to the accused resulting from changes in his circumstances occurring during the period to be taken into consideration. There was, nevertheless, room for overlapping and between them "unjust" and "oppressive" cover all cases where return would not be fair.

49. In Government of the Republic of South Africa v Dewani (no. 2) [2014] EWHC 153 (Admin), the Divisional Court (comprising two members who had sat in the previous proceedings in that court) held that the breadth of factors to be considered in the determining whether return would be unjust or oppressive includes a forward-looking element as regards what might happen in the requesting state if extradition were ordered. The court accepted that this:-

> "entails… taking into account the question as to whether ordering extradition would make the person's condition worse and whether there are sufficient safe-guards in place in the requesting state" (paragraph 50). There are, however, no "hard and fast rules"; that would be inconsistent with the position that each case must be specifically examined by reference to its facts and circumstances". The only situation where a court would most probably say that it would be oppressive and unjust to return would be where the person concerned had been found by the court in the requesting state to be unfit to plead" (paragraph 51)."

50. Although what Ouseley J had to say in Mikolajczyk is entirely compatible with the point made by the House of Lords in Gomes and Goodyear v Trinidad [2009] 1 WLR1038 that, in considering what amounts to oppression, hardship is in not enough, the possibility that treatment in the requesting state would be less satisfactory for the person concerned than would be in the United Kingdom, whilst a relevant factor, is not necessarily determinative, (paragraph 17).

51. A similar point was made by Julian Knowles J in Magiera v District Court of Krakow, Poland [2017] EWHC 2757 (Admin). At paragraph 32, he held that a proper assessment must be made of what effects extradition would have upon the person concerned and his medical condition. Once that exercise had 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. After that has been done, the court must make its assessment required by Article 8 and section 25 in the manner described in the authorities (paragraph 32). It is axiomatic that the requesting state does not necessarily have to show that the adverse effects or hardship would be eliminated; otherwise, there would be a risk of the court paying insufficient regard to the fact that imprisonment is inherently harsher than non-custodial sentences; and that many of those imprisoned in the United Kingdom suffer from medical conditions that aggravate consequences of loss of liberty. As Julian Knowles J went on to explain at paragraphs 33 to 36 of his judgment, the more complex or challenging the medical condition, the more detailed the information needed from the requesting state as to how it proposes to deal with the person concerned during their imprisonment.

52. The court has addressed the risk of suicide, in the context of section 25, in a number of cases. In Turner v United States [2012] EWHC 2426 (Admin), Ms Turner was sought to stand trial on charges resulting from a fatal road accident in 2005. Ms Turner had taken overdoses of drugs, with the intention of self-harming, both before and after the accident. It was contended that extradition to Florida would give rise to further suicide attempts, such as to make extradition unjust or oppressive by reason of her mental condition. In paragraph 28, Aikens LJ, reviewing the relevant case law, found that 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". 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 person concerned will commit suicide. The question is whether, on the evidence, the risk of the person succeeding in committing suicide, whatever steps are taken, is sufficiently great to result in a finding of oppression. 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 the persons mental condition but his own voluntary act which puts him at risk of dying. If that is the case, there is no oppression in ordering extradition. On the evidence, the risk of the person succeeding in committing suicide, whatever steps are taken, must be sufficiently great to result in a finding of oppression. The question was whether there are appropriate arrangements in place in the prison system of the country to which extradition is sought, as to enable the authorities there to cope properly with the persons mental condition and the risk of suicide. As held in Norris v The Government of the United States of America [no.2] [2010] 2 AC487, it is important to bear in mind the public interest in giving effect to treaty obligations.

53. At paragraph 49, Aikens LJ reminded himself that it was for Ms Turner to demonstrate that the evidence for the court was "decisive", such as to show it would be oppressive to extradite her to the USA. That threshold was a high one. Aitkens LJ held that it had not been reached. Although Ms Turner's mental condition was delicate and difficult and had deteriorated and may well deteriorate further if she was extradited, and that there was a substantial danger she may attempt suicide again if she were extradited, it could not be said that her current mental condition that flowed from the consequences of the road accident and the request for her extradition would give rise to the extradition being either unjust or oppressive by reason of that mental condition. That was so, "even if that includes a substantial risk of further attempts at suicide by her". Globe J agreed.

54. In Wolkowicz v Poland [2013] [EWHC 102], the Divisional Court, found that Aikens LJ's analysis in Turner should be adopted. At paragraph 10, the court held that "a person does not escape a sentence if imprisonment in the UK simply by pointing to the high risk of suicide. The court relies on the executive branch of the State to implement measures to care for the prisoner". During the transfer process, the UK authorities liaise with the authorities of the requesting State "to ensure that during the transfer proper arrangements are in place to prevent suicide in appropriate cases". Medical records should be sent with the requested person and delivered to those who will have custody during transfer and in subsequent detention. 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. Where the requesting state is a member of the EU, it should not be necessary to require specific assurances from that State; ordinarily it will be sufficient to rely on the presumption. As a result of the foregoing, it is "only in a very rare case that a requested person will be likely to establish measures to prevent a substantial risk of suicide will not be effective".

55. In Love v Government of the United States of America [2018] [EWHC 172] (Admin), the Divisional Court (Lord Burnett of Malden CJ and Ouseley J) allowed the appeal of an appellant whom the USA wished to have extradited in order to stand trial for offences arising out of cyber-attacks on the computer networks of US companies and government agencies. Mr Love had Asperger's Syndrome and suffered from severe depression as well as physical conditions, including eczema. At paragraph 113, the Court decided that it would approach the issue of oppression on the assumption that, if extradited, Mr Love would, if convicted, expect to receive a prison sentence in the order of ten years. The court's conclusions on oppression were as follows:-

> "115. We come to the conclusion that Mr Love's extradition would be oppressive by reason of his physical and mental condition. In this difficult case, and in the course of an impressive judgment, we conclude that the judge did not grapple with an important issue. She accepted the ability of the BOP to protect Mr Love from suicide, on the basis of Dr Kucharski's comment that "no one commits suicide on suicide watch". It was implicit that measures could be taken in America which would prevent Mr Love committing suicide even though he might be determined to do so and have the intellect to circumvent most preventative measures. The important issue which flows from that conclusion is the question whether those measures would themselves be likely to have a seriously adverse effect on his very vulnerable and unstable mental and physical wellbeing? We consider that they would both on the evidence before the judge and on the further evidence we have received.
>
> 116. We also consider, and this is reinforced by the further evidence, that the evidence adduced by the BOP [the Federal Bureau of Prisons] as to its policies and programmes could not be treated as resolving the issue as to his medical treatment in favour of the United States, without deciding that the practical evidence on behalf of Mr Love was not worthy of any real

weight, which is what the judge does appear to have decided. We, however, judge that the evidence as to conditions and treatment in practice is rather weightier than she did, and that, in Mr Love's rather particular circumstances, what is likely to happen in practice has to be given decisive weight. Dr Kucharski's evidence was particularly important in view of his experience.

117. We have set out the material evidence very fully, because we are differing from the District Judge in her careful judgment, and can now set out our conclusions from it shortly.

118. We accept that the evidence shows that the fact of extradition would bring on severe depression, and that Mr Love would probably be determined to commit suicide, here or in America. If the judge is right in concluding that the high risk of suicide can be prevented, notwithstanding Mr Love's determination, planning and intelligence, about which we have real doubts, on her findings it is only because of the evidence that no one has committed suicide on suicide watch in the care of the BOP. Yet one stratagem identified by Professor Kopelman and Dr Kucharski was that Mr Love would present himself as no longer suicidal for sufficiently long to be removed from suicide watch, precisely so that he could then commit suicide.

119. If he were kept on suicide watch and reviewed every 30 days or so, he would be in segregation, with a watcher inside or outside the cell for company, and with very limited activities. All the evidence is that this would be very harmful for his difficult mental conditions, Asperger Syndrome and depression, linked as they are and for his physical conditions, notable eczema, which would be exacerbated by stress. That in turn would add to his worsening mental condition, which in its turn would worsen his physical conditions. There is no satisfactory and sufficiently specific evidence that treatment for this combination of severe problems would be available in the sort of prisons to which he would most likely be sent. Suicide watch is not a form of treatment; there is no evidence that treatment would or could be made available on suicide watch for the very conditions which suicide watch itself exacerbates. But once removed from suicide watch, the risk of suicide as found by the judge, cannot realistically be prevented, on her findings.

120. Were Mr Love not to be in segregation, his Asperger Syndrome and physical conditions would make him very vulnerable. He would be a likely target for bullying and intimidation by other prisoners. The response by the authorities would be segregation for his own protection, which would bring in all the problems of isolation to which we have already referred. He would have no support network available in prison in the United States. There is no basis upon which we could

> conclude that the severity of the problems would be brought swiftly to an end by early transfer to the United Kingdom.
>
> 121. Mr Love already experiences severe depression at times. It is very difficult to envisage that his mental state after ten years in and out of segregation would not be gravely worsened, should he not commit suicide. Professor Kopelman's evidence was that he would be at a permanent risk of suicide.
>
> 122. Oppression as a bar to extradition requires a high threshold, not readily surmounted. But we are satisfied, in the particular combination of circumstances here, that it would be oppressive to extradite Mr Love. His appeal is allowed on that ground as well."

56. It is noteworthy that, despite what was said in Dewani, the Divisional Court in both Turner and, most recently, Love had no problem in stating that oppression "requires a high threshold, not readily surmounted". It seems, therefore, that there can be no objection to a court expressly recognising the nature of the threshold, so long as the court remains focused on all the relevant facts of the case before it.

57. As we have seen, District Judge Zani distinguished the present case from that of XY. Before me, Mr Stansfeld continued to rely on XY and it is therefore necessary to examine the case in some detail. XY was sentenced to four years' imprisonment in the Netherlands for robbery. That was in October 2011. XY was released from custody in December 2013, having served two-thirds of his sentence. In October 2014, however, the Court of Appeal in Amsterdam increased XY's sentence to one of five years' imprisonment. XY's extradition was sought in order for him to be returned to prison, as a result of that increase in sentence.

58. XY said that he was the victim of rape whilst in prison in the Netherlands. At the time he heard that his sentence had been increased, he was living rough and having serious mental health issues. When found on a half-sunken boat in December 2014, XY was very ill. He was diagnosed with PTSD and depression and prescribed anti-depressant medication. As District Judge Zani noted, XY returned to his apartment to find the decomposing body of his flatmate, who had committed suicide. This occurred in the United Kingdom. The medical expert who gave evidence before the District Judge "really believed that there was a 'very high risk' of XY committing suicide" (paragraph 24).

59. At paragraph 49, Elizabeth Laing J noted:-

> "… the very unusual circumstances of this case. In short, I accept Mr Seifert's submission that there was significant delay, which is not properly explained, before the decision of the [Amsterdam] became irrevocable. That delay has caused two kinds of irretrievable prejudice to the appellant: he having been released in 2013, as he thought having served his sentence. First, he is now liable to serve a sentence of 5 year's imprisonment; not 4. Second, in addition, he is not to be treated as having served the 4-year sentence, the position when he was released; but is

> exposed to the potential to serve the remaining one-third of that sentence as well as to the potential of serving the extra sentence".

60. At paragraph 50, Elizabeth Laing J considered these to be "unique facts", which meant that the interference with the appellant's Article 8 Rights would be "exceptionally severe". This was "an exceptional case in which it would be disproportionate to extradite the appellant". Amongst the factors leading to that conclusion, were his chances of receiving appropriate therapy for his PTSD, as against the chances of it becoming untreatable; and a very high risk of suicide, together with the "recent deterioration in his mental health". She therefore concluded:

> "51. In my judgment, the DJ's decision on s.25 was also wrong in the very unusual circumstances of this case. Two factors lead me to that view. 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.
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> 52. 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.
>
> 53. 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 DT 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 place that had triggered the symptoms.
>
> 54. For those reasons, as I say, I consider that the DJ's decision on Art. 8 and s.25 was wrong, and I allow this appeal."

61. District Judge Zani also cited Norris v The Government of the United States of America (no. 2) [2010] UKSC9, where it was held that upholding bilateral extradition

treaties would be seriously damaged if those who face serious (as opposed to trivial) offences were able to defeat extradition as a result of their Article 8 protected family lives. The legal test to be applied is one of proportionality; but, recognising the weight of the public interest in extradition, the reality of conducting an assessment of proportionality will rarely result in a finding that extradition would be disproportionate with a requested person's Article 8 Rights, unless there exist particularly compelling or exceptional circumstances relating to a person's private and family life. The legal test is not, however, one of "exceptionality"; it remains one of proportionality.

62. In H(H) the Deputy Prosecutor of the Italian Republic [2012] [UKSC 25], the Supreme Court clarified the principles set out in Norris. At paragraph 31, Lady Hale agreed with Lord Judge CJ that there are differences between extradition and other reasons for expulsion. That meant an extradition order might be appropriate where deportation or removal would not. In particular, extradition was "an obligation owed by the requested State to the requesting State in return for a similar obligation owed the other way round. There is no comparable obligation to return failed asylum seekers and other would-be immigrants or undesirable aliens to their home countries (which would sometimes be only too pleased never to see them again). But there is no obligation to return anyone in breach of fundamental rights".

63. In Polish Judicial Authority v Celinski [2015] [EWHC 1274] (Admin), the Divisional Court gave guidance in the light of Norris and H(H). Amongst other matters, the Divisional Court observed that H(H) concerned the interests of children and that the judgments in that case must be read in this context; that the public interest in ensuring extradition arrangement honoured is very high; so too the public interest in discouraging persons seeking as seeing the United Kingdom as a refuge from justice. Factors that mitigate the gravity of the offence or culpability would ordinarily be matters that the court in the requesting state will take into account. That, in itself, should be taken into account by the court in the United Kingdom that is considering extradition in an accusation matter. So far as conviction cases are concerned, the United Kingdom judge would seldom have the detailed knowledge of the proceedings or the background of previous offending history of the offender, which the sentencing judge had in the requesting State. Each EU State is entitled to set its own sentencing regime and levels of sentence and, provided these were in accordance with the ECHR, it is not for a United Kingdom judge to second- guess that policy. It would rarely be appropriate for the United Kingdom judge to consider whether the sentence was very significantly different from that which 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.

64. Finally, mention must be made of the recent case of Kruk v Judicial Authority of Poland [2020] [EWHC] 620 (Admin). This was a case in which Mr Kruk had been convicted of offences of burglary and sentenced to 2 years' imprisonment, suspended for 5 years. The sentence was later activated. At the time of the extradition appeal hearing before Steyn J, he had served over fifteen months of his 24 month sentence. At paragraph 13, Steyn J considered that additional time served was "the most important factor and I shall return to it". At paragraph 17, Steyn J dealt with the challenge to the District Judge's judgment that insufficient weight had been given to the risk of suicide, if Mr Kruk were extradited. It was noted that he had a mental health condition, in the form of moderate depression, and that, although not currently actively suicidal, the medical

evidence was that if extradition were ordered, Mr Kruk's risk of suicide would become high. Steyn J held at paragraph 18 that the suicide issue was taken into account by the District Judge, as weighing against extradition. In her judgment, the District Judge had not been wrong to find that it was not a disproportionate interference with Mr Kruk's article 8 Rights and those of his family in the United Kingdom, to extradite him. Nevertheless:-

> "that was almost a year ago. The appellant has now served more than 15 months of his 2-year sentence. By the time he reaches Poland, if he is extradited, he would have a little over eight months left to serve of the required entire sentence."

65. At paragraph 23, in striking the Article 8 balance, Steyn J found that the fact the appellant had served 15 months of his sentence was "a weighty factor". The appellant had not gone unpunished for the offences he committed 10 years ago. At paragraph 27, she found that the 10 year period and the 5 year period between the commission of the offences and the sentence, diminished the public interest in extradition to some extent. She also regarded the appellant's mental health "as a particularly significant factor in this case, having regard in particular to the psychiatrist's evidence regarding the appellant's serious self-harm when he was in custody in Poland and the evidence that he has attempted suicide in the past". On the specific facts, Steyn J held that the Article 8 balance was in favour of the appellant.

66. Beginning of paragraph 28 of her judgment, Steyn J rejected the submission that deportation would be oppressive, in terms of section 25. At paragraph 44, she found it was clear the District Judge concluded that there was not a substantial risk that the appellant would commit suicide. Having regard to the evidence of Dr Forrester, that the appellant suffered from moderate depression, for which he was not taking any medication, and that he was not currently suicidal, but that the risk would become high if extradition were ordered, Steyn J found at paragraph 47 that the District Judge "was right to determine that there was not a substantial risk of the appellant's succeeding in committing suicide. Even if the risk of him seeking to do so was likely to become high, there was no evidence to suggest that the risk could not be managed by the Polish Authorities".

Discussion

67. My powers in this appeal are set out in the 2003 Act. I may allow the appeal; direct the District Judge to decide the question again; or dismiss the appeal. By section 27(2) and (3), I may allow the appeal only if the District Judge ought to have decided the question before him at the extradition hearing differently; and, if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge. The conditions in section 27(4), which relate to "new" issues or evidence, are not relevant in the present case.

68. Mr Stansfeld submitted that the District Judge's findings regarding the "ligature" incident were unsupportable. These findings had infected the District Judge's conclusion on both the section 25 (oppression) issue and the section 21 (Article 8 EHCR) issue.

69. The first aspect of this submission is that the District Judge considered Dr Youngman had taken into account the information provided to her by the appellant, that he had previously tied a ligature around his neck in the police cell when arrested. I agree with Mr Stansfeld that it is important to look in detail at the extent (if any) to which her noting of that incident informed Dr Youngman's conclusions. It is plain from her first report, which I have attempted to summarise in some detail, that Dr Youngman did not base her conclusions on the assumption that the ligature incident had actually occurred. She merely stated that, *if* it were true, then she would view it as strong evidence of the measures the appellant would take to avoid extradition. Accordingly, the question whether the incident had occurred was, I find, not material to Dr Youngman's overall conclusion, in paragraph 61 of her first report, that if the appellant's extradition were ordered and he was safely received in the Czech Republic, there would be a long-term risk of self-harm and suicide, which would require close monitoring from mental health practitioners and both pharmacological and psychological treatment for his depression, which would increase in severity in a custodial setting. Nor did it affect her conclusion, at paragraphs 22 and 23 of her second report, that the risk of suicide was "high", with the result that the appellant would require "close monitoring"; and that it would be "crucial for his mental health needs and suicide risk that these be communicated to the receiving authorities/establishment".

70. I therefore agree with Mr Stansfeld that, to this extent, the District Judge misconstrued the evidence of Dr Youngman and had insufficient regard to it because he found that the ligature incident had not, in fact, occurred. This leads to the second aspect of the submission, which is that the District Judge held the non-occurrence of the "ligature incident" against the appellant, when assessing the latter's credibility. At paragraph 102 of his judgement, the District Judge said he regarded the evidence " provided by [the appellant] that he tied a ligature around his neck while in police custody in Burnley after arrest as being wholly unreliable" [original emphasis]. This led to the finding, in paragraph 125, that the appellant had not been "a totally honest witness in the evidence given to this court". In finding that the appellant had "tailored certain aspects of his testimony to best suit his purposes", District Judge Zani gave as the first and "best" example, the appellant's "evidence in respect of the 'ligature'".

71. As Ms Burton properly recognised, the District Judge fell into error, in that it was not, in fact, the appellant's evidence at the hearing that he had tied the ligature whilst in detention. The incident did not find expression in his witness statement; nor am I satisfied that the appellant made such a claim in his oral evidence. As I have already mentioned, although these adverse findings occur in the part of the judgment dealing with Article 8, the District Judge expressly said, at paragraph 73, that his findings in respect of Article 8 were also "relevant to my decision to dismiss this s.25 challenge". Accordingly, I agree that this misapprehension of the appellant's evidence on the part of the District Judge infected both his section 25 and his Article 8 findings.

72. At paragraph 125, having identified the ligature incident as the first and best example of the appellant's lack of credibility, the District Judge gave two other examples. Both of these were criticised by Mr Stansfeld. The District Judge gave as his second example the fact that the appellant initially could not recall attending the court in the Czech Republic for the hearing in March 2017 but that when pressed he remembered it without any apparent difficulty. Mr Stansfeld is, of course, correct to say that, once something initially forgotten is remembered, then it is no longer forgotten. I do not, however, find

that this renders the example in paragraph 125(2) of the judgement defective. It is trite that judicial fact-finders are acknowledged by appellate courts as having had the benefit of hearing and seeing the person concerned give evidence. It was open to the District Judge to regard it as unsatisfactory that the appellant easily brought to mind something he had a little earlier been supposedly unable to remember.

73. There is, however, merit in the criticism of the District Judge's finding at paragraph 125 (iii). Here, the District Judge regarded it as inconsistent that in the appellant's proof of evidence, he had professed an intention of wishing to obtain medication to help with his sleeping difficulties, whereas in oral evidence he said he was taking Diazepam that had been given to him by a friend, making no mention of having pursued any attempts to secure authorised medication from his G.P. As Mr Stansfeld submitted, wishing to obtain prescribed medication is not incompatible with having obtained prescription medication by other means.

74. It is clear that the District Judge regarded what he considered to be the appellant's lack of credibility, on particular matters, as informing his findings on section 25 and on Article 8. There being no proper basis for those adverse findings, the judge erred in law in having regard to them. As Mr Stansfeld submitted, in this event, it falls to me to undertake my own assessment of both matters. I did not take Ms Burton to dissent from this approach.

75. If, having done so, I conclude that the appellant does not succeed on either of the grounds concerned, then I must dismiss the appeal since, notwithstanding the District Judge's erroneous findings of fact, the requirement of section 27(3)(b) would nevertheless not be satisfied; In other words, notwithstanding the errors that led to the judge's decision to dismiss the appellant's appeal, that decision would not be "wrong".

76. This does not mean, however, that I should not have regard to the oral evidence given to the judge by the appellant and Dr Youngman. Plainly, I must do so, together with the written materials.

77. In reaching my conclusions on both issues, I have had full and close regard to Dr Youngman's reports and what she is recorded as having said to the District Judge at the August 2020 hearing. Although Dr Youngman's first report states that the appellant's anxiety and low mood would be likely substantially to deteriorate, if he were to return to the Czech Republic, it appears that the focus of her evidence at the hearing was not on the appellant's return to that country *per se*, but on the likely effects of the appellant's imprisonment, following return. That is entirely understandable because, on the totality of the evidence, it is apparent that the appellant did not come to the United Kingdom in order to escape discrimination and abuse as a Muslim in the Czech Republic but, rather, in order to have a better opportunity of earning money to pay off his debts in his home country. Furthermore, notwithstanding the criticisms I have made of his judgment, I agree with the District Judge that it is highly noteworthy the appellant chose to return to the Czech Republic from the United Kingdom on a number of occasions, including in November 2017, in order to be sentenced for a further criminal offence. As the District Judge found at paragraph 127, this was a serious offence, which could have resulted in imprisonment. Having regard to the of the totality of the evidence, I find that the appellant's concerns, which are said to be likely to trigger a deterioration in his mental state and a give rise to a high risk of suicide, relate to having

to serve his sentence of imprisonment, rather than to merely finding himself again in the Czech Republic.

78. Mr Stansfeld rightly submitted that, in considering section 25 issue, regard must be had to the nature of the extradition offences and to the sentence imposed. The offences are plainly not trivial. The amount of money actually obtained by the appellant was significant; in excess of £10,000 at current rates of exchange. If all the appellant's criminal activity had been successful, he would have obtained significantly more money. Although I accept that the extradition offences were committed when the appellant was 18, not long after he had left the family home (whether he was "thrown out", as he alleges, is unclear), the Czech court can be expected to have had regard to his age and other circumstances, when imposing the sentence. Indeed, the sentence was initially a suspended one. The offence which led to its activation was committed in February 2018, some two years after the first of the string of offences committed in 2016. The appellant's criminality was, therefore, in any event not confined to the period immediately after he left his home.

79. Although I have regard to Mr Stansfeld's submission that, if the relevant offences have been committed in England and Wales, a non-custodial sentence may well have been imposed, rather than a suspended sentence of imprisonment, I agree with Ms Burton that the matter is not clear-cut. In any event, the case law warns me against over-reliance upon such comparisons, at least in conviction cases. In similar vein, I do not find the appellant derives any material assistance from Criminal Practice Direction 2015 Division XI paragraph 50A. The extradition offences do not fall to be treated for the purpose of the CPD as minor offences, in respect of which extradition may be found to be disproportionate. The relevant offending involved "multiple counts". I do not consider that the sums involved were "small". Both these factors mean the offences are not the kind of offences with which CPR 50A is concerned.

80. The appellant's history of self-harm is confined to the scratches which he made on his arm at a Police Station, prior to transfer to HMP Wandsworth. The Wandsworth custody record notes these scratches, as well as recording that the appellant had " suicidal thoughts". He was put on suicide watch. I give weight to that matter. I also place substantial weight on Dr Youngman's opinion that there would be a high risk self-harm or suicide, if the appellant were imprisoned in the Czech Republic. I accept her oral evidence that the appellant would not, for this purpose, distinguish between a prison and the psychiatric facility in which he was held as a child.

81. This means that close regard must be had to the steps the Czech authorities would take to safeguard the appellant, whilst in prison. The District Judge very sensibly requested further information from the Czech Republic on this matter. Mr Stansfeld criticised the District Judge's reliance upon the ensuing information from Judge Skařupová. He submitted that Judge Skařupová was not qualified to answer questions concerning the treatment and supervision of the appellant whilst in prison. I do not consider that this evidence properly falls to be ignored or given immaterial weight. I have had regard to Judge Skařupová's evidence, making allowances for its limitations, which she herself acknowledges. I agree with Ms Burton that, notwithstanding those limitations, Judge Skařupová can be expected to have some understanding of the general position regarding the Czech prison regime since, as a sentencing judge, she would need to possess such knowledge.

82. As already mentioned, Judge Skařupová made reference to the fact that Czech law "does regulate situations where a convicted person is unable to serve a custodial sentence". That statement was made in the context of Judge Skařupová's emphasis upon the Czech republic's adherence to "the principles of fundamental human rights and freedoms", and to the professional psychological assistance available to those serving sentences of imprisonment. I agree with Ms Burton that considerable weight should be placed upon these matters. They go directly to Dr Youngman's evidence, which was to the effect that, because the appellant would (in his view) be in the same kind of environment he experienced as a child, when he was held in a psychiatric hospital, it is unlikely he could be treated successfully for his depression, which is linked to his Asperger's Syndrome. Were he to require treatment, and were it concluded this could not be adequately undertaken in prison, then the Czech authorities can, I find, be expected to react appropriately, if they consider the appellant is unable to continue to serve a custodial sentence. I see no justification for distinguishing, in this regard, between the position in the Czech Republic and that in the United Kingdom, if the position were reversed.

83. Dr Youngman's evidence does not disclose that, if returned, the appellant's mental state would be such as to remove his capacity to resist the impulse to commit suicide. In any event, the evidence does not show that the risk of suicide is sufficiently great to result in oppression, whatever steps may be taken by the Czech authorities. On the contrary, Dr Youngman's reports emphasises the need for "close monitoring from mental health practitioners", without suggesting that such monitoring would be ineffective.

84. Mr Stansfeld submitted that, even if the Czech authorities were able to keep the appellant alive during his incarceration, the effect on his mental health would, nevertheless, be so grave as to make it oppressive to extradite him. I accept that the holistic assessment, which the case law stresses must be made, requires consideration of the effects on a person's mental health that may lead them to wish take their own life, even though the prison authorities are able to prevent them doing so. Most people who commit suicide, or who attempt to do so, act as a result of mental anguish. Care must, however, be taken, lest such considerations lead to in an impermissible dilution of the principles contained in the case law relating to suicide risk in the extradition context.

85. Love is relied on by the appellant. Despite what the case law says about the dangers of factual comparisons in this area, it is therefore necessary for me to examine the facts. I have earlier set out the relevant passages from the judgment of the Divisional Court. At paragraph 115, the court considered whether the measures to prevent Mr Love committing suicide would themselves be likely to have a seriously adverse effect on his very vulnerable and unstable mental and physical wellbeing. In concluding that they would, the Divisional Court was plainly influenced by the likely period of time (10 years) during which Mr Love would possibly have to be kept on suicide watch, involving " segregation, with a watcher inside or outside the cell, and with very limited activities". That would be "very harmful for his difficult mental conditions, Asperger's Syndrome and depression, linked as they are". It would also exacerbate his physical conditions, notably eczema "which would be exacerbated by stress". That would add to his worsening mental condition, which in turn would aggravate his physical conditions. Also of particular relevance was the finding of paragraph 118 that the medical experts considered that "Mr Love would present itself as no longer suicidal for sufficiently long to be removed from suicide watch, precisely so that he could then

commit suicide". This concatenation of circumstances led the Divisional Court to conclude that the "high threshold" was surmounted for demonstrating oppression, were Mr Love to be extradited to the USA.

86. The factual matrix of the present case is, I find, so different that no material assistance can be derived from Love. Mr Love faced 10 years imprisonment, as opposed to the 2 years faced by the present appellant. The medical evidence in the present case is also markedly different. There is no suggestion that the appellant would have the desire or acumen to deceive the prison staff into giving him the opportunity to end his life, which was a matter that plainly struck the Divisional Court as important. It is also noteworthy that, unlike the present case, there is nothing in the judgment in Love to suggest that the US prison authorities would have considered whether, at any point, Mr Love might be "unable to serve a custodial sentence" and to react appropriately, if they did.

87. I have also had regard to the evidence of Dr Zizka, who speaks from the specific vantage point of the prison authorities in the Czech Republic. It is plain from his evidence that those authorities are aware of what may be needed in the case of prisoners with Asperger's Syndrome. Mr Stansfeld sought to rely upon that part of Dr Zizka's evidence that suggests the appellant may, if necessary, be hospitalised is a psychiatric inpatient ward of the Brno secure prison hospital. That would, according to Mr Stansfeld, be to put the appellant directly back in the environment he most fears. My consideration encompasses that eventuality. Even if that worst-case scenario were to arise, having regard to all the circumstances including the range of measures described by Dr Ziska and Judge Skařupová, I do not find that it would amount to oppression. Such a scenario is, however, in any event, an extremely unlikely one, having regard to Dr Youngman's evidence. She accepted that the regulated regime that prison affords could be helpful to the appellant, although there would be concerns about such matters as his personal hygiene.

88. It is also apparent from Dr Zizka's evidence that the authorities will have regard to such matters as "accommodation", which I take to include the type of custodial facility that might be regarded as suitable, and to "choice of group", which I take to mean that the authorities would have regard to the likely interaction (or lack of it) between the appellant and those with whom he may be incarcerated.

89. As already indicated, Mr Stansfeld placed considerable emphasis upon the judgment of Elizabeth Laing J in XY. He submitted that the significance of XY for the present case lay in the fact that the appellant would be returning to the very place that he feared; namely, a detention facility in the Czech Republic, whether psychiatric or penal in nature. I do not accept this submission. It is clear from the judgment in XY that Elizabeth Laing J was not laying down any legal principle to that effect. Again, the factual background was, moreover, very significantly different. The appellant had been released from imprisonment, only to be given a longer sentence after an inexplicable delay (paragraph 49) and having served most of his sentence of imprisonment. Whilst serving that sentence under the care and control of the Dutch prison service, XY had been anally raped. At paragraph 51, the judge regarded that as "in large measure, caused by the failure of the Dutch or authorities to protect him". There is no comparable failure in the present case. On the contrary, the appellant's experiences in the psychiatric hospital as a child were occasioned by his difficult behaviour, driven at least in part by his ADHD, from which he no longer suffers. Although the appellant may consider his treatment at that time to have been unnecessary or excessive, there is no objective

evidence to support that view. The position is, thus, far removed from that in XY. Furthermore, the appellant's Asperger's Syndrome was, obviously, not caused by his time in a psychiatric hospital. As I have already held, if any treatment that the appellant requires proves to be ineffective, the evidence from the Czech authorities shows that appropriate steps will be taken. Accordingly, I find that the conclusion of the judge on the issue of oppression (section 25) was not wrong.

90. I turn to Article 8. There is, as both counsel submitted, a considerable overlap between the Article 8 ground and the section 25 ground. It is, nevertheless, the case that a finding against the appellant on the section 25 ground does not necessarily mean that it would be a proportionate interference with his Article 8 rights to extradite him. That said, I do not consider that Article 8 can properly be invoked as a general means of defeating extradition on mental health grounds, where those grounds have found to be insufficient to support a finding that extradition would be oppressive in terms of section 25. Kruk is of particular interest in this regard since, as we have seen, Steyn J rejected the section 25 ground but allowed the appeal on the Article 8 ground. That was a case, like the present one, where risk of suicide was in issue. Steyn J found that removal would not be oppressive, despite the risk of suicide. As is plain from paragraphs 9 to 27 of her judgment, she did not find that the appellant succeeded on Article 8, merely by reference to the evidence concerning mental health and risk of suicide. On the contrary, at paragraph 18 Steyn J found that "the District Judge was not wrong to find that it was not a disproportionate interference with the appellant's Art. 8 Rights, and those of his family, in the UK, to extradite him". What led to the allowing of the appeal on Article 8 grounds was that, by the time of the appeal hearing, the appellant had served 15 months, well over half, of his prison sentence. Steyn J regarded that as "a weighty factor in the Art .8 balance" (paragraph 23). As is clear from paragraph 27, it was this factor, together with the appellant's mental health (and other relevant factors) which led to the allowing of the appeal on the Article 8 ground. Kruk accordingly, offers no support to the present appellant. There is no "new" factor that falls to be considered in undertaking the balancing exercise.

91. I therefore undertake that exercise. In favour of granting extradition is the strong continuing public interest in the United Kingdom abiding by its international extradition obligations and in not permitting the United Kingdom to be seen as a safe haven for foreign criminals. The 2 years' sentence of imprisonment is indicative of the seriousness of the offence. For the reasons I have explained earlier, I am satisfied that the Czech authorities have both the means and intent to address the problems identified in Dr Youngman's reports. So far as concerns what I find to be the unlikely eventuality that any necessary treatment cannot be administered to the appellant whilst in prison, I have identified other measures that the authorities can be expected to take.

92. The factors in favour of refusing extradition include the fact that, despite what I have just said, extradition may well have a deleterious impact upon the appellant's mental health, at least while he is imprisoned. The appellant is not a fugitive. His offences were committed when he was relatively young and, whilst serious, are not of the gravest kind. The appellant has formed a private life in the United Kingdom with friends; in particular those he has met at his mosque. He does not, however, have any family life.

93. In all the circumstances, I find that the factors weighing in favour of extradition are greater than those weighing against it. For the reasons I have given, the risk of suicide is not such as to be incapable of satisfactory management by the authorities. The likely

decline in the appellant's mental health whilst he is in prison will be adequately addressed by those authorities. The appellant has no protected family life in the United Kingdom. For the reasons given above, the factors in favour of extradition are not weakened or otherwise diminished.

94. The appellant's extradition would, therefore, not constitute a disproportionate interference with his Article 8 ECHR Rights, or those of any other person.

95. This appeal is dismissed. I invite counsel to draft an appropriate order.