Case No: CO/5751/2016

Neutral Citation Number: [2017] EWHC 2757 (Admin)

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/11/2017

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

	ANDRZEJ MAGIERA	**Appellant**
	- and -	
	DISTRICT COURT OF KRAKOW, POLAND	**Respondent**

- -
- -

Robert Katz (instructed by **BSB Solicitors**) for the **Appellant**
Jonathan Swain (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing dates: 18th October 2017

- -

Judgment**Mr Justice Julian Knowles:**

Introduction

1.This is an appeal by the Appellant, Andrzej Magiera, against the decision of District Judge Baraitser at Westminster Magistrates' Court on 8 November 2016 to order his extradition to Poland pursuant to a European arrest warrant ('EAW') issued by the Judicial Authority on 29 August 2014. The Appellant is represented by Mr Katz and the Respondent by Mr Swain.

The EAW

2.The EAW is a conviction warrant relating to three offences. The offences are referred to in

two judgments. The first judgment is dated 22 November 2006 and became enforceable on 30 November 2006. It relates to one offence described in Box E of the EAW. The Appellant is described as having, on 30 August 2005, together with others, submitted a false certificate of employment to obtain a loan to purchase a fridge and cooker, and that in doing so he caused a loss to the victim bank of PLN 3569.07. He received a prison sentence of 10 months, all of which remains to be served.

3.The second judgment is dated 17 December 2009 and became enforceable on 25 December 2009. It relates to two identical offences each described in Box E. It is said that on 4 December 2007 the Appellant again submitted false documents to obtain a loan. The amount of the loan he sought was PLN 3150. On 18 March 2008 the Appellant did the same, except this time the amount of the loan was PL1800. For these offences he was given a sentence of one year and six months imprisonment, all of which remains to be served.

4.Box D states that the Appellant was present at each of his trials resulting in the decisions to sentence him to terms of imprisonment. Mr Swain on behalf of the Respondent was not able to confirm how long the Appellant will spend in prison if he is extradited and so, in fairness to the Appellant, I will assume that he will serve both sentences in full and therefore that he may spend more than two years in prison in Poland if he is returned there, although I am aware that in Poland multiple sentences are often combined and replaced by a single reduced term.

Proceeding before the district judge

5.Before the district judge the Appellant relied on two bars to extradition: (a) that extradition would be a disproportionate interference with his right to private and family life and would therefore be a breach of Article 8 of the European Convention on Human Rights ("the ECHR"); (b) that to extradite the Appellant would be oppressive by reason of his ill-health, and thus extradition is barred by s 25 of the Extradition Act 2003 ("the EA 2003").

6.

The basis for these submissions is the Appellant's poor state of health. He is currently 53 years old. In early December 2015 he was diagnosed with colorectal carcinoma. Later that month he had two operations, the first to remove the cancer and the second shortly afterwards when he developed post-operative complications arising from a leak of his bowel. This necessitated the creation of a stoma. A stoma is an opening in the abdomen from which a portion of the patient's intestine protrudes allowing for a bag to be attached for the collection of faeces. It is a procedure which is often carried out on those who have undergone surgery for colorectal cancer. The Appellant was in hospital for a month, during which he suffered a number of complications. Following his discharge, he has had numerous follow-up and outpatient appointments.

7. He gave evidence before the district judge about the personal care that is necessary because of the stoma. He explained that twice a month he is sent stoma bags, disinfectant

and dry wipes. He has to use scissors in order to cut the bags to size. He has to keep the stoma and the bags dry, and so when he takes a shower he has to wrap himself in cling film. He explained that on average he uses five to seven bags a day but can sometimes use up 13 depending on how active his gut is. He told the judge "sometimes I don't manage to change the bag in time and it expels which is very messy". He also told her, "everything has to be sterile, I have to have everything ready, I have to quickly put a new bag on. I have a special shelf where I have everything - the shelf is washed every day." In addition, he told the judge that he has to eat particular foods and avoid "liquidy stuff" although he can eat meat, fish, potatoes and other vegetables.

8. The district judge had before her a quantity of medical evidence. The first is a letter dated 14 June 2016 from Mr Budhoo, a consultant colorectal and general surgeon. He confirmed that the Appellant had surgery in December 2015 for a cancerous growth in his bowel. Using Dukes' Staging System, the cancer was at Stage B, meaning that the cancer had grown through the muscle layer of the bowel but happily had not yet spread to any lymph nodes. He said that no further treatment was required for the cancer. However, he went on to explain that the Appellant had had complications from the surgery, namely a leak from where the bowel had been reattached, which required to be taken down and a stoma fashioned. The Appellant subsequently developed a hernia. The surgeon said that the repair to the bowel and the hernia would be a very complicated operation, although it was possible to undertake it. The judge also had a letter from Mr Budhoo dated 24 June 2016 which requested that the Appellant have access to toilet facilities on a 24-hour basis. There was other evidence which I need not set out concerning follow-up appointments and colonoscopies which the Appellant has had since the time of his operation. (I should also note that as well as bowel cancer, the Appellant also has severe varicose veins, arthritis and a smoking - induced lung disease).

9. The district judge dealt carefully with the submissions under Article 8 at para 37 et seq of her judgment. She cited the relevant case law (namely, *Norris v. Government of the United States of America* [2010] 2 AC 487, *HH v. Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338 and *Polish Judicial Authorities v. Celinski* [2016] 1 WLR 551) and then at para 42 et seq she considered the factors for and against extradition. She noted that the Appellant has been in the United Kingdom since September 2010 and that he worked initially, although he is unable to work now because of his health. At para 43 she set out her conclusions on the medical evidence and it is clear she accepted without reservation the medical picture that had been put in front of her. At para 45 she said:

> "However I have no information about whether his particular needs can be accommodated in prison in Poland. It is reasonable to assume there are medical facilities in prison which cater for a range of conditions, including a stoma. Equally if a prison is not able to manage condition (*sic*) it is reasonable to assume treatment can be provided by agencies outside the prison system, including a transfer to hospital if necessary. Further it is reasonable to assume where the health of the prisoner is such that detention in a prison hospital is unsuitable the relevant authority could bring the matter back to court to determine whether it is

> appropriate for Mr Magiera to serve the rest of the sentence in prison. I have no evidence that Mr Magiera's medical needs cannot be dealt with in the prison environment."

10. She said that the Appellant has no convictions in the United Kingdom and has led a law-abiding life here. However, at para 43 she labelled the offences as "serious" and, having adopted the *Celinski* checklist approach at paras 50 and 51, she concluded at para 52:

> "On the evidence before me, there is nothing to suggest that the negative impact of extradition on Mr Magiera is of such a level that the court ought not to uphold his country's extradition operations. I am satisfied extradition in this case would not be a disproportionate interference with their (*sic*) Article 8 rights."

11. In relation to s 25 she essentially relied on the same reasoning to reject the contention that it would be oppressive to extradite the Appellant because of his ill-health. She said at para 55, "there is no reason to believe he will not be treated properly in prison and provided with adequate care for his condition."

The grant of permission and fresh evidence

12. There are three grounds of appeal: (a) that extradition would be incompatible with the Appellant's rights under Article 8 of the ECHR; (b) that it would be incompatible with his rights under Article 3 of the ECHR; (c) extradition is barred by s 25 of the EA 2003. Article 3 does not appear to have been raised before the district judge.

13. Permission to appeal in this case was granted by Collins J on 19 January 2017. He said:

> "The burden undoubtedly lies with the Appellant to establish his case under section 25 but, once an interference with private life is established, the Respondent has to show the removal would be proportionate. It is, I think, arguable that the assumption made about the provision of all necessary treatment are not justified and further information should have been obtained"

14. Collins J ordered that an up-to-date medical report on the Appellant be obtained and that the Polish authorities be asked whether the Appellant could be properly treated in the prison system.

15. The up-to-date medical report is dated 22 May 2017 and the author is Mr Manish Chand, who is a *locum* consultant colorectal and general surgeon at University College London Hospital and an Honorary Senior Lecturer at University College, London. The report is very lengthy and it is sufficient for present purposes if I set out Mr Chand's Opinion in Section 10:

> "AM has undergone major surgery for serious diagnosis of colorectal cancer.

- Unfortunately, he has suffered a significant but not uncommon, complication of surgery necessitating reoperation and leaving him with a colostomy.

- In recent months he has found the stoma output erratic and this has resulted in an emergency admission to hospital.

- The peri-stomal skin is now a problem and his granulomas (*sic*) causing occasional bleeding and itching (*sic*).

- He also has an incisional hernia which is reported as being large and protruding but the degree as to which this is causing symptoms is not clear from the documentation.

- Nevertheless, the presence of a large, visible hernia would be psychologically difficult to contend with in prison. There would be issues affecting his dignity in such an institution with most inmates not understanding this condition. Furthermore, there is a risk of a hernia becoming complicated and incarcerating or obstructing if not carefully managed,

- Further surgery to restore gastrointestinal continuity to the bowel is quite rightly considered complicated and one would think long and hard about the merits of such surgery given the associated complications and that he experienced several complications from chest infection to wound infection the first time around.

- In addition to these issues surrounding the treatment of his bowel cancer, he suffered considerable pain in his legs from arthritis and has consulted his GP several times in recent years. I cannot comment on the management of his arthritis however it would seem that prison would not be ideal to manage this painful condition.

- He also has a pending referral to the vascular surgeons the management of his varicose veins. I cannot comment on how best to manage this condition however the symptoms described in the GP consultations describe a situation whereby he would get discomfort from long periods of standing. Again, incarceration in difficult conditions within a Polish prison would not be ideal to manage this symptomatic condition.

- The clinical picture at present demonstrates a number of physical, functional and psychological aspects.

- Each of these are individually difficult to predict but will require easy access to expert stoma care, flexible living conditions and privacy to maintain the stoma itself.

- I cannot comment on the studies of Polish prison service and the conditions that AM would have to endure but in order for him to optimally manage his current condition he would need a great deal of flexibility, access to specialist stoma care, hygienic conditions with excellent sanitation and some degree of psychological support.

- To manage his stoma he would need at minimum privacy to contend with an erratic stoma and changing appliances with some unpredictability. This would not be possible in any sort of shared cell where he would need significant space to store and have access to a variety of equipment to manage his stoma. He would need his own bathroom for this to be accessible at all times.

- He would need readily available access to cold and hot running water in proximity to stored stoma appliances and adjunct materials eg scissors to cut the bags, adhesive and spray adhesive remover, topical creams.

- Changing stoma bags is not without its difficulty and it can be distressing to surrounding people who are not familiar with one eg a cellmate. It would not be appropriate for AM to have to do this in view of anyone else as this would compromise his dignity and potentially leave him open to insults. This is inappropriate for his psychological well-being after a difficult post-operative recovery.

- The presence of the stoma means that this would be visible during wash times and for other inmates to see. This would not be psychologically appropriate and affect dignity during these periods. One would expect a person with a stoma to have private wash facilities.

- It is not uncommon for erratic stoma output to result in appliances bursting and spilling faeculent material. This would be very difficult to contend with in a prison situation and in front of other inmates.

- The presence of a stoma does not mean that patient's do not experience uncontrolled and unpredictable rectal discharge. This can be highly embarrassing particularly a situation where one's personal freedom is limited.

- To that end, I am not convinced incarceration in the circumstances suggested would be appropriate or in the best physical and psychological interests for the management of his complicated stoma, colorectal cancer and associated conditions."

16. There is also before me a report dated 31 July 2017 by Maria Ejchart-Dubois on the standards of the provision of healthcare in the Polish prison system. In para 73 the author highlights what she terms "enormous problems" with the provision of healthcare generally. Specifically in relation to this Appellant she says at para 75 onwards:

> "75. Due to insufficient number of medical personnel it is very likely that Mr Magiera would not be provided with sufficient medical assistance. In his daily life, physiological and hygiene needs he will be left to rely on the help of his fellow inmates.
> 76. Mr Magiera might not be provided with sufficient amount of hygienic materials. As a result he will be more susceptible to infection.
> …
> 78. Due to lack of individual cells, prison hospital, restrictions on use of the showers and hot water, small number of existing medical staff, eg nurses, Krakow-Podgorze Detention Centre might not be a suitable facility for Mr Magiera to service his sentence."

17. On behalf of the Respondent there is a document dated 13 June 2017 from the Director Central Corrections Administration, Healthcare Office. This makes a number of points. It says prisoners are entitled to free medical care, medications and sanitary supplies. It says prisoners can have access to outside healthcare facilities where specialist treatment is needed. It is clear the Polish authorities were not given details of the Appellant's specific conditions and needs because of the top of the second page it says:

> "As the general information you provided regarding the sentenced person's illnesses does not specify the details of the necessary treatment or diagnostics, we would appreciate medical records of the treatment he has received so far."

18. The letter goes on to say that every prisoner gets a check-up and the doctor may direct "exceptions from the 21 December 2016 regulation of the Ministry of Justice on the organisational procedures in enforcing custodial sentences". A number of general statements made such as "privacy is respected", there is access to running water and inmates are entitled to one bath per week although the doctor can order more. Prisoners are not allowed to have scissors. The letter suggests that the Appellant be held at the Krakow Detention Centre.

19. I formally give leave to both parties to rely on this fresh evidence.

Submissions

20. Mr Katz on behalf of the Appellant submits that although the judge identified the correct factors in relation to the balancing exercise required for the purposes of the Article 8 analysis, she gave insufficient weight to the combination of factors weighing against extradition namely the Appellant's medical conditions and the indignity and difficulty (he would say) of managing the care of a stoma and hernia in crowded prison conditions; the severe pain from his varicose veins; the need for ready access to toilets at short notice; that the sentences are not of "front rank" seriousness; and that the Appellant has been in the UK for seven years and never offended here.

21. He says that even on the evidence before her the judge should have concluded that the bars in Article 8 and s 25 were made out, but that in any event the fresh evidence tips the balance in the Appellant's favour. He submits that the information from Poland about health care facilities is not sufficient. He points out that the Polish authorities did not even have the Appellant's medical records and so did not and could not make a proper assessment. He says that whilst there might be a health assessment in Poland, no time scale is given and it is not known what would happen to the Appellant in the meantime except that he would be in detention. He says that the proposal to place the Appellant in the Krakow Detention Centre is plainly inappropriate for the reasons given in Maria Ejchart-Dubois's report.

22. On behalf of the Respondent Mr Swain submits that the district judge was correct in conducting the balancing exercise as she did and that she was correct in her determination that extradition would not be a disproportionate interference with the Appellant's Article 8 rights. He says that even with the fresh evidence, the detailed response from the relevant prison authorities in Poland establishes that proper care will be available to the Appellant in Poland. He emphasises that the doctors will have a role to play; if it is not appropriate for the Appellant to be detained in an ordinary cell he can be detailed in the hospital wing; and that the doctors have the power to recommend that the sentence not be (or no longer be) enforced. In short, he says that the evidence demonstrates that the Respondent is willing and able to provide care for the particular needs of the Appellant and that, as such, extradition would not be disproportionate. He also says that for extradition to be barred under s 25 a high threshold has to be passed, and that it is not passed in this case. He resists the Appellant's attempt to rely on Article 3 because it was not raised before the district judge.

Statutory framework and legal principles

23. Poland is a Category 1 territory, and Part 1 of the EA 2003 accordingly applies.

24. Section 21 of the EA 2003 required the district judge to consider whether extradition would be compatible with the Convention rights of the defendant (as he then was, Appellant as he now is) under the Human Rights Act 1998.

25. A specific bar to extradition in cases of physical or mental condition is provided by s 25 of the 2003 Act, which 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."

26. This being an appeal under s 26 of the EA 2003, s 27 applies:

> "(1) On an appeal under section 26 the High Court may—
>
> (a) allow the appeal;
>
> (b) dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> (3) The conditions are that—
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) 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.
>
> (4) The conditions are that—
>
> (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
> (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge."

27. In assessing whether extradition would be a disproportionate interference with those rights, the effect of the decisions of the Supreme Court in *Norris*, supra, and *HH*, supra, and *Celinski,* supra, is that the issue is whether the interference with Article 8 is outweighed by the public interest in extradition. It is likely that the public interest in extradition will outweigh the Article 8 rights of the requested person (and any relevant member of his family where that factor is relied upon) unless it would result in an exceptionally severe interference with family life. That public interest always carries great weight, though the weight to be attached to it in a particular case will vary according to the nature and seriousness of the crimes of which the requested person has been convicted or stands accused. As was made clear in *HH*, supra, delay since the relevant crimes were committed may both diminish the weight to be attached to that public interest and increase the impact of extradition upon family life.

28. In relation to s 25 of the EA 2003, the proper approach was set out by the Divisional Court (Sir John Thomas P. and Ouseley J) in *Dewani v. Government of the Republic of South Africa* [2012] EWHC 842 (Admin) at paras 73 – 74:

> "[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 para 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 …
>
> [74] … We agree with the observations of Maurice Kay LJ in *Prancs* at para 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 Pt II for the reasons we have given at para 67 and then the Bill was amended to add the provision to Pt I. Although that may not assist in determining whether s 25 (and hence s 91) is to be read as reflective of art 23.4, the use of the term "unjust or oppressive" plainly indicates that Parliament intended its own test."

29. In *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 799, Lord Diplock,

explained the terms “unjust” and “oppressive” in a well-known passage in his speech at p782:

> “'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair.”

30. Where the decision of a district judge on Article 8 is challenged on appeal in the absence of fresh evidence, the decision in *Celinski*, supra, makes it clear that the single question for this court is whether the district judge made the wrong decision. However, where fresh evidence is relied upon, the approach is different. This Court must decide for itself whether the court below, had it had that evidence, would have decided the question arising under Article 8 differently. In doing so I must make my own assessment of the proportionality question on the basis of all of the material which is before me: *Olga C v. The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), para 26.

31. On an appeal by an Appellant against an adverse finding under s 25 it is for this Court to decide for itself on the material before it whether the Appellant's medical condition is such that it would be unjust or oppressive to extradite him: *Dewani v. Government of South Africa* [2012] EWHC 842 (Admin), para 63; *Howes v Her Majesty's Advocate* [2009] SCL 341, para 91; *Government of the United Sates v Tollman* [2008] 3 All ER 350, para 95.

Analysis

32. Where an extradition defendant maintains that it would violate Article 8 to extradite him because of his medical condition, or that extradition is barred by s 25 for the same reason, there must be an intense focus on what that medical condition is and what it means for him in terms of his daily living, so that a proper assessment can be made of what effects upon him and his condition extradition and incarceration would have. Once that exercise has been carried out the court must assess the extent to which any adverse effects or hardship can be met by the requesting state providing medical care or other arrangements. Once that has been done, then the Court must finally make the assessment required by Article 8 and s 25 in the manner described in the authorities which I have set out above to determine whether the bar is made out. This is consistent with the approach of the Divisional Court in *Dewani v. Government of South Africa* [2014] EWHC 153 (Admin):

> “50. …. We must take into account all such matters, including the consequences to the requested person's state of health and age. We accept that this entails a court taking into account the question as to whether ordering extradition would make the person's condition worse and whether there are sufficient safeguards in

place in the requesting state."

33. This exercise requires an intensely fact specific approach (something which the Court in *Dewani*, supra, also emphasised at para 51 ('… each case must be specifically examined by reference to its facts and circumstances.')) It is obvious that medical conditions range in their nature, severity and scope. At one end of the spectrum are those diseases and illnesses such as diabetes, a chronic long-term illness which can, if not properly treated, have very serious consequences, but which is common, well–understood and in the vast majority of cases easily treatable by diet, tablets or insulin, even in the prison environment. At the other end of the spectrum are illnesses and diseases which are more complex (not necessarily more serious, although they may be) whose management cannot be so easily achieved, and certainly not where the person affected is a serving prisoner. An example might be cystic fibrosis which, as well as being life-limiting, can raise a variety of complications which require frequent hospitalisation, intravenous use of drugs, and other techniques and preventative measures to enable the patient to avoid and/or recover from lung infections.

34. This means, in turn, that where a requesting state is asked to respond to concerns about the health of a person whose extradition from the UK they have requested, and to supply details of how they would propose to manage that person in a prison environment to assuage legitimate concerns about the person's health were he to be extradited and incarcerated that are supported by detailed medical opinions, they must provide, so far as is reasonably practicable, a response which meets the concerns in respect of that specific individual. That is not to say that very lengthy documents or care plans need always be provided by way of reply. The starting point must be 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: *Kowalski v. Regional Court in Bielsko-Biala, Poland* [2017] EWHC 1044, para 20. From that starting point it might not necessary to say very much more. In the case of an insulin dependent diabetic prisoner, for example, it might merely be necessary for the requesting state to indicate that the management of diabetes in understood, that insulin is available, and that arrangements can be made for the defendant's blood sugar to be appropriately monitored.

35. However, in other cases, where the treatment or management of the illness or condition is more complex, more detail may be required before the court considering matters under Part 1 of the EA 2003 can be satisfied that concerns arising from the defendant's medical condition have been met such that there are no bars to extradition. The reason is that it is self-evident that the range of medical care that is provided in prisons is necessarily and inevitably more limited than that which is available in the outside world (as the Polish authorities in this case have expressly stated), and it is also obvious that the sort of medical care which can be provided in prisons is subject to constraints arising from security requirements and the like. Thus, in some cases it may be necessary for the requesting state to provide specific details of what concrete steps will be taken to address the specific issues arising from the defendant's illness to ensure that he does not suffer severe hardship or oppression by reason of his incarceration resultant on extradition. In such a case, broad generalised assertions to the effect that the prison has a clinic, or that prisoners are entitled to health care, or that (unspecified) medicines are available, may not be enough.

36. In all cases, however, I would expect the authorities in the requesting state to be provided with the defendant's medical records so that they have a proper understanding of what the health issues are. Without these records anything they say will likely be only of a general nature and, in many cases, such general information may not be of much assistance to whichever court in this country is considering matters.

37. Turning to the facts of this case, and applying that approach, it seems to me that the response of the Polish authorities is wholly insufficient to meet the very real concerns which have been expressed by the doctors in the medical evidence that I have seen, and in particular the evidence of Mr Chand. The principal issues regarding the Appellant's care are not, it seems to me, related specifically to his cancer and the need for medical treatment of it. Happily, it seems on the evidence that his cancer was caught sufficiently early so that he can now be regarded as cancer-free following his operations. The concerns which arise come about because of his stoma and what he needs to do to manage that in a hygienic and dignified way. To repeat what Mr Chand said in his report:

> "To manage his stoma he would need at minimum privacy to contend with an erratic stoma and changing appliances with some unpredictability. This would not be possible in any sort of shared cell where he would need significant space to store and have access to a variety of equipment to manage his stoma. He would need his own bathroom for this to be accessible at all times."

38. I am well -aware from my experience in the field of extradition that prisoners are often confined to their cells for very lengthy periods. Sometimes overcrowding is a problem. On the evidence as I read it, there is currently a real risk that the Appellant would be incarcerated in a cell with a significant number of other prisoners for lengthy periods without access to the bags, scissors and sanitising equipment which he needs order to avoid the wholly distressing situation of a stoma bag overflowing with faeces. What if his bag were to overflow at 9pm, with the cell not due to be opened again until 7am the following morning? Is it the case he will have to lie there in his own faeces for 10 hours? As well as the pure indignity of such an event, there must be a real risk that other prisoners, instead of being supportive, would react badly to it, placing the Appellant at risk. And, in addition, such an occurrence would pose health risks to the Appellant and others.

39. Wholly absent from the Polish evidence is any explanation of what concrete steps they would put in place to avoid this situation occurring. I know nothing of the regime to which he will be subject including whether he will be in a multi-occupancy cell (although, as I have said, that must be a distinct possibility); exactly what access he will have to toilets and running water and the other necessities specified by Mr Chand; or what privacy and facilities he would be afforded in the cell (or out of the cell) to change his stoma bag when he needs to (which he inevitably will).

40. In my judgment, to place the Appellant at risk of being unable to care for himself in a

hygienic and dignified way for any length of time would unquestionably be oppressive and in violation of s 25 of the EA 2003 and would also be a disproportionate interference with his right to a private and family life under Article 8 of the Convention. It constitutes the sort of particular, distinct and severe hardship which is necessary to reach the necessary thresholds for these provisions.

41.

It is of real concern that the Appellant's medical reports were not supplied to the Polish authorities, so that they have no real understanding of what the Appellant's needs would be if he returned to Poland. Nor is there any explanation of how his stoma would be managed even on the hospital wing, or what the physical facilities there would be. He would not be allowed to have scissors in his cell for reasons which are readily understandable, but in light of this, it was incumbent on the Polish authorities to explain what alternative arrangements were going to be made for him to be able to change his stoma bag when required, because scissors are an essential part of the equipment needed to change a stoma bag.

42. Whilst not in any way doubting the good faith of what is said in the Polish response (although it is right to observe that what they have said can perhaps best be regarded as the ideal, and not necessarily what always occurs in real life in prison in every case), the real difficulty I have with the response is that it does not address what the issues in the Appellant's case really are. I consider it to be a real possibility that the doctors would regard the Appellant's case as not something which particularly requires medical intervention by them, but was something for the regular prison authorities to manage as part of the Appellant's incarceration. And for the reasons I have given there is no information about what would be done if that were the case.

43. For these reasons, therefore, on the material that is now before me, which is much more extensive than that which was before the district judge, I have concluded that it would be oppressive to extradite the Appellant by reason of his physical health, and thus that extradition is barred by s 25 of the EA 2003. I also conclude that this is a rare case where it would be disproportionate and therefore in violation of the Appellant's rights under Article 8 for him to be extradited. I therefore hold that the district judge would have decided these questions differently had she had the material that is now before me and that, had she done so, she would have ordered the Appellant's discharge (see s 27(3)).

44. I therefore allow the appeal and quash the order for the Appellant's extradition which was made by the district judge. In these circumstances it is not necessary for me to reach any conclusions about the Appellant's submissions under Article 3.