Case No: CO/4780/2016

Neutral Citation Number: [2018] EWHC 210 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/02/2018

Before:

LORD JUSTICE HOLROYDE
and
MR JUSTICE JAY

- -

Between:

	LMN	**Appellant**
	- v -	
	GOVERNMENT OF TURKEY	**Respondent**

- -
- -

David Josse QC & Ben Keith (instructed by **Dalton Holmes Gray**) for the **Appellant**
Toby Cadman (instructed by **CPS Extradition**) for the **Respondent**

Hearing dates: 25th January 2018

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JUDGMENT **Lord Justice Holroyde:**

1. This is an appeal against a decision of District Judge Zani ("the District Judge") on 20th July 2016 that there were no bars to the extradition of the appellant to Turkey. The District Judge therefore sent the case to the Home Secretary, who on 8th September 2016

ordered the appellant's extradition, pursuant to section 93(4) of the Extradition Act 2003.

Anonymisation:

2.On behalf of the appellant, Mr Josse QC invites the court to exercise its power under CPR r39.2(4) by anonymising this judgment. He does not seek any wider order for anonymity. Mr Cadman for the respondent takes a neutral stance. The rule provides that –

> "The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness."

I accept that this is a proper case in which to do so, in particular because - as will become apparent – this judgment necessarily refers to sensitive matters relating to the mental health of the appellant, and also to his allegation that he was a victim of anal rape. Although the anonymisation of this judgment is a departure from the important principle of open justice, it is a limited departure which in my view is justified in the circumstances of this case. Accordingly, the appellant will be named in this judgment only by the use of the randomly-chosen initials LMN.

The Facts:

3.The appellant is now 41 years old. He is Iranian by birth, and lived in that country until 2002. He is also a naturalised British citizen through marriage, and thus holds dual nationality. Whilst living in Iran, he qualified as a martial arts instructor. He performed his compulsory military service, during which time he suffered the trauma of seeing his best friend killed.

4.The appellant came to the UK in 2002 as a kick boxer attending an international tournament. He failed to return to Iran, and sought asylum in this country, which was refused in 2004. He then returned to Iran for about a year, for some of which time he was imprisoned, before being granted a visa to return to this country for six months to visit his then fiancée. He subsequently married his fiancée, and obtained a visa on the basis of that marriage. The marriage ended in divorce in 2007. He became a UK citizen in 2008.

5.The appellant subsequently married his present wife. There are two children of the family: a boy now aged 13, and a girl now aged 9. The family home is in London.

The criminal proceedings in Turkey:

6.On the 5th February 2011 the appellant was arrested at the Turkish border as he tried to drive from Turkey into Greece. A search of his car revealed more than 33 kilograms of MDMA concealed beneath the back seat. The explanation which the appellant put forward at his subsequent trial in Turkey, and which was repeated in a proof of evidence which was before the District Judge at the extradition hearing, was to the effect that he had driven from London to Iran to visit his family there following the death of his father. Whilst there, he had acceded to a request by a friend in England to lend his car to the friend's cousin in Iran for the purposes of a wedding. He asserted that the drugs must have been concealed in the car during the period of that loan, and that he knew nothing about them until the border police stopped him and found them. The Turkish court disbelieved that account, and convicted the appellant of an offence of importing the controlled drug into Turkey. On 26th June 2012 the court, having made a number of allowances in the appellant's favour, imposed a sentence of seven and a half years' imprisonment. It appears that under Turkish law the appellant could expect to be moved from a closed to an open prison after he had served three years and to be conditionally released after he had served two-thirds of his sentence.

7.The appellant was detained in Edirne closed prison from his arrest on 5th February 2011 until 9th February 2014. He was then to be transferred to an open prison a considerable distance away. It appears that he was required to make the journey between prisons on his own. It further appears that the appellant never did surrender to the open prison. There was no evidence before the District Judge as to when or how the appellant made his way back to London.

8.In relation to his time in the closed prison, the appellant's proof of evidence described cramped accommodation in insanitary conditions, with inadequate and inedible food, very little exercise and severely restricted visiting. His proof of evidence further described his having been bullied and abused by both prisoners and by prison officers, and treated less favourably than Turkish prisoners, because he was foreign. He described particular incidents of violence by other prisoners, including one in which he was stabbed in the back, and another in which he was kicked and suffered a broken finger. He stated that medical treatment was, in practice, non-existent. He referred to the sexual abuse of a young prisoner, which he said was carried out by other prisoners and condoned by the guards, but made no suggestion that he himself had suffered sexual abuse. He concluded his proof of evidence by saying that, as a result of his experience in the Turkish prison, he suffered from PTSD, insomnia, flashbacks and depression.

The request for extradition:

9.On 9th June 2015 the Chief Public Prosecutor's Office of Edirne in the Republic of Turkey requested the extradition of the appellant to Turkey to serve the remaining 724 days of his sentence. The request recorded that the appellant escaped from the Turkish open

prison on 9th February 2014.

10. On 16th October 2015 the Westminster Magistrate's Court issued a warrant for the arrest of the appellant. He was arrested in London, three days later. The evidence of the arresting officer, which was before the District Judge, included the following:

> "He stated that he had served three years imprisonment for this offence in Turkey, but left the country when they moved him to an open prison. He stated that he was aware that he still had a sentence to serve, but left as his family was in the UK."

11. The appellant was granted bail on 27th October 2015. He has remained on bail, subject to conditions, since that date.

12. Further information provided by the government of Turkey for the purposes of the extradition hearing indicated that, if extradited, the appellant as a foreign national would be held at Maltepe L-Type Closed Prison No. 3 ("Maltepe 3"). As I understand it, Maltepe 3 is part of a large complex of prison buildings, which includes another closed prison of similar design, "Maltepe 2". The information stated that the appellant's mental and physical welfare would be assessed on his admission to the prison, and that any necessary medical treatment would either be given in the prison or referred to a state hospital or a university hospital. The information also said that a prisoner could be transferred to an open prison if he was within 2 years of his conditional release date and had shown good conduct, but did not indicate whether the fact that the appellant had previously escaped would affect his prospects of being moved to an open prison.

13. The further information included a reference to the fact that Professor Rod Morgan (who has particular expertise in relation to custodial conditions in Turkey), had visited Maltepe 2 in March 2015 in connection with extradition proceedings against a Mr Charles, and had "drafted a report dated 15 March 2015 on the practices in our prisons". The report itself was not before the District Judge, though it was before this court. Mr Charles' case is wholly unrelated to the present appeal, but Professor Morgan's evidence in relation to Mr Charles featured prominently in Mr Josse's submissions. So too did the decision of a Divisional Court in Mr Charles' case: *Charles v Mugla Chief Public Prosecution Office, Republic of Turkey* [2017] EWHC 952 (hereafter, "*Charles*").

The extradition hearing:

14. The full extradition hearing began before the District Judge on 3rd April 2016. It was adjourned part-heard to 9th June 2016. The District Judge's decision was handed down on 20th July 2016.

15. The appellant did not himself give evidence before the District Judge. Nor did he call his wife as a witness on his behalf, though her proof of evidence was before the court. He was of course not obliged to give evidence, though in view of the issues which were being argued on his behalf, it might have been thought that he would wish to do so - not least because it was contended that his past treatment was the best indicator of the risk he would face if returned to Turkey. The District Judge, justifiably, took the view that the weight which he could give to the proofs of evidence of the appellant and his wife was considerably diminished because there had been no opportunity for the statements to be tested in cross-examination.

16. Four expert witnesses gave evidence for the appellant: Dr Scheiner, a psychologist; Professor Bowring, a professor of law with expertise in extradition, immigration and asylum matters relating to Turkey; Margaret Owen OBE, an expert in human rights matters; and Dr Andrew Forrester, a forensic psychiatrist approved under section 12(2) of the Mental Health Act 1983. In very brief summary:

i) Dr Scheiner recorded the appellant's account of conditions in the Turkish prison (which included a graphic account of the rape of one prisoner by others but did not include any suggestion of sexual abuse of the appellant), and carried out tests which indicated severe PTSD, extreme helplessness and extreme clinical depression. She expressed the opinion that, if extradited, the appellant would definitely try to kill himself. Dr Scheiner also found the appellant's wife to be severely depressed, and felt there was a strong likelihood that she too would attempt suicide if her husband were returned to Turkey.

ii) Professor Bowring stated that the trafficking of drugs overland through Iran was well-known to be a major source of funding for the activities of the PKK in opposition to the government of Turkey. He expressed the opinion that the appellant would be at risk of persecution and ill-treatment because he would be perceived, however erroneously, to be a Shi'ite Muslim with connections to drug trafficking and the PKK.

iii) Ms Owen referred to numerous past breaches by Turkey of the human rights of prisoners and detainees, and to the increase in prison overcrowding since the summer of 2015. She referred to reports, including from the Turkish Human Rights Foundation, of torture in Turkish prisons, both by prisoners and by guards. She expressed the opinion that the appellant would be at risk of ill-treatment by both prisoners and guards because as an Iranian Kurd he would be seen as a supporter of the PKK. She felt that the risk was increased by the fact that the appellant has complained about his previous ill-treatment in the Turkish prison.

iv) Dr Forrester assessed the appellant on 20th March, 2016. He found that the appellant met the criteria for a diagnosis of moderate-severe depressive episode, a recognised medical condition for which the appellant was currently receiving

appropriate anti-depressant medication. He also found some features of PTSD, another recognised medical condition: the features of that condition had improved following the appellant's return to the UK, but had recurred since the extradition proceedings began. He considered it likely, for reasons which he explained, that if the appellant were extradited "his mental conditions would deteriorate, with the emergence of more severe depressive symptoms". He took the view that, if extradited, the appellant would be at high risk of suicide. He emphasised the importance of knowing what healthcare services would be available in a Turkish prison, as he felt it vital that the appellant should continue to receive the coordinated care management which he was currently receiving from his doctor and a psychologist in this country.

17. No evidence was called on behalf of the government of Turkey.

18. On the appellant's behalf, extradition was challenged on three grounds:

i) under section 81 of the Extradition Act 2003, on the basis that the appellant would be prejudiced because it would wrongly be assumed that he was of Kurdish ethnicity and was a supporter of the PKK, an organisation opposed to the government of Turkey and proscribed by the European Union;

ii) under Article 3 of the Convention on Human Rights, on the basis that if extradited he would be subjected to torture or to inhuman or degrading treatment or punishment; and

iii) under Article 8, in the basis that his extradition would cause serious harm to the rights of himself and his family to a family life.

19. The District Judge recorded in his judgment that all necessary formalities of the extradition proceedings had been complied with. He rejected each of the grounds of challenge. He summarised the expert evidence but noted certain features of it to which the respondent had drawn attention, including the following: the witnesses had not visited any prison in Turkey; Dr Scheiner had not spoken to the psychologist who was currently counselling the appellant, had not seen the appellant's medical records and accepted that she was not qualified to provide a diagnosis; Ms Owen had recorded the appellant as having accused the prison staff of torturing him, when no such allegation had been made.

20. The District Judge decided as follows in relation to the three grounds of challenge:

i) The prison records referred to in the further information include the appellant's place of birth but made no reference to any religious belief, and the evidence did

not persuade him that the appellant would be at risk of persecution on grounds of actual or imputed ethnicity, religion or political belief.

ii) The Article 3 challenge was weakened by the appellant's decision not to give evidence. He did not accept the evidence as establishing a definitive diagnosis of PTSD. In any event, he felt that any PTSD might have been caused by something other than incarceration in the Turkish prison, for example the death of his friend during military service. It was accepted on behalf of the appellant that his current state of health was not such as to permit a challenge based on a risk of suicide, having regard to the principles set out in *Turner v Government of USA* [2012] EWCHC 2426 (Admin) and *Wolkowicz v Poland* [2013] 1 WLR 2402. There was no evidence that the appellant's importation of drugs was connected to a terrorist organisation. The appellant had therefore failed to overcome the high hurdle necessary to succeed under Article 3.

iii) Having conducted the balance sheet exercise in accordance with the principles in *Polish Judicial Authorities v Celinski* [2015] EWHC 1274 (Admin), the factors against extradition did not outweigh the strong public interest in the UK abiding by its international extradition obligations in relation to a man who was a fugitive from a prison sentence imposed for a serious offence.

21. The District Judge therefore concluded, as I have indicated, that there were no bars to extradition.

The appeal:

22. The matter comes before this court by way of notice of appeal given on the 20th September 2016, and grounds of appeal dated 4th October 2016.

23. Four grounds of appeal were initially put forward:

i) that the judge was wrong in his conclusion about Section 81 of the 2003 Act;

ii) that the District Judge was wrong in his conclusion in relation to Article 3, having regard to the "inhumane and degrading prison conditions in Turkey and likely persecution and torture from the state and non-state agents", and to the risk of suicide;

iii) that the judge was wrong in his conclusion in respect of Article 8, because of the severe impact which extradition would have on the appellant and on his family,

including the risk of suicide; and

iv) that subsequent to the extradition hearing, and following the unsuccessful attempted coup against the Turkish government on 15th July 2016, there has been "a significant shift in the political landscape in Turkey", and a significant increase in imprisonment, and that this court should examine the impact of these events on the human rights situation in Turkey.

However, the first of those grounds – that based on section 81 of the 2003 Act – has been abandoned.

24. Permission to appeal was initially refused on the papers. An oral hearing of a renewed application for permission was due to be heard in January 2017, but was adjourned to await the decision of the Divisional Court in *Charles*. Permission was subsequently granted, by me, at an oral hearing on the 13th July 2017. I gave directions with a view to a hearing in the Autumn Term of 2017. Sir Stephen Silber subsequently gave directions extending the legal representation order so that further expert evidence could be obtained on the appellant's behalf. A full hearing was listed for 13th December 2017 but was adjourned, following an application by the respondent based upon a need for more time to consider further evidence served by the appellant.

The legislative framework:

25. Part 2 of the Extradition Act 2003 applies to these proceedings. Section 87 of that Act required the District Judge to decide whether the appellant's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 and required him, depending on his conclusion, either to order the appellant's discharge or to send the case to the Secretary of State for her decision as to extradition. The appeal against the District Judge's decision is brought under Section 103 of the Act, which provides:

> "(1) If the judge sends a case to the Secretary of State under this Part for his decision whether a person is to be extradited, the person may appeal to the High Court against the relevant decision.
>
> (2) But subsection (1) does not apply if the person consented to his extradition under section 127 before his case was sent to the Secretary of State.
>
> (3) The relevant decision is the decision that resulted in the case being sent to the Secretary of State.

(4) An appeal under this section –

(a) may be brought on a question of law or fact, but

(b) lies only with the leave of the High Court. …"

It is not necessary to recite the remainder of that section, which is concerned with cases in which the person has been discharged, and with time limits.

26. The powers of this court, on hearing an appeal under section 103, are set out as follows in section 104:

"(1) On an appeal under section 103 the High Court may –

(a) allow the appeal;

(b) direct the judge to decide again a question (or questions) which he decided at the extradition hearing;

(c) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in sub-section (3) or the conditions in sub-section (4) are satisfied.

(3) The conditions are that –

(a) the judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided a 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 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.

(5) If the court allows the appeal it must –

(a) order the person's discharge;

(b) quash the order for his extradition.

(6) If the judge comes to a different decision on any question that is the subject of a direction under sub-section (1)(b) he must order the person's discharge.

(7) If the judge comes to the same decision as he did at the extradition hearing on the question that is (or all the questions that are) the subject of a direction under sub-section (1)(b) the appeal must be taken to have been dismissed by a decision of the High Court.

(8) If the court makes a direction under sub-section (1)(b) it must remand the person in custody or on bail.

(9) If the court remands the person in custody it may later grant bail."

Evidence obtained after the extradition hearing:

27. The appellant seeks permission to rely on evidence which was not adduced before the District Judge. This further evidence can conveniently be considered in three categories.

28. First, the appellant wishes to adduce in evidence a further statement dated 18th October 2017, in which he asserts that whilst serving his sentence he confronted a Turkish prisoner about the sexual abuse of a young foreign prisoner. The appellant states that he was subsequently tricked into entering a cell where he was held down by a number of other prisoners and raped by the man he had confronted, that a guard locked the cell door

and stood outside whilst this was happening, and that one of the prisoners involved held a knife to the appellant's neck and threatened to kill him if he told anybody. The statement says that the appellant was too frightened to do anything about it, and that he subsequently suffered rectal bleeding which he thought was a result of the rape, and for which he had an operation in 2017. He had been so ashamed that he did not tell his wife or anyone else until he made disclosures when recently seen by Dr Forrester and Dr Scheiner. This statement is supported by a statement from the appellant's solicitor to the effect that she was first informed of the allegation of rape by Dr Scheiner, and that the appellant asked her to disclose the information to his wife.

29. Secondly, the appellant seeks to rely on a further report dated 6th November 2017 by Professor Morgan.

30. Thirdly, additional reports have been obtained from Dr Scheiner, Dr Forrester and Professor Bowring. In each instance, the further evidence refers to the political developments in Turkey since the attempted coup against the government in July 2016, and considers the consequences of those developments for the appellant's position if extradited to serve the remainder of his sentence. Dr Scheiner and Dr Forrester both refer to the appellant's disclosures to them of the rape allegation.

31. The Respondent have filed further information from the government of Turkey in the form of two letters from Judge Altintas, a senior Turkish judge with the Directorate-General for International Law and Foreign Relations of the Turkish Ministry of Justice. No objection has been raised on behalf of the appellant to the court's considering their contents. One of the letters is undated: it appears to be in a standard form, and sets out the rights of a defendant in Turkish criminal proceedings. The fairness of the appellant's trial is not in issue in this appeal, and I therefore think it unnecessary to refer to the details of the letter.

32. The other letter, dated 9th January 2018, is a response to the appellant's allegations about the independence of the Turkish judiciary following the failed coup attempt of 15th July 2016, and about the rape allegation. In summary, Judge Altintas says that the Republic of Turkey is an independent and sovereign state, one of the founding members of the Council of Europe and a democratic, secular and social state governed by the rule of law. He refers to the governing AKP party fighting against terrorist organisations which include the PKK and DAESH. He refers to articles of the Turkish Constitution which require the judiciary to be independent, and which make clear that the Republic of Turkey is subject to the jurisdiction of the European Court of Human Rights. He describes the attempted coup and the subsequent state of emergency which was declared in accordance with article 120 of the Constitution. He states that in times of emergency, article 15 of the Turkish Constitution provides more protection of individuals' rights and freedoms than does Article 15 of the European Convention on Human Rights. He points out that both Turkey and the UK have for many years been parties to the European Convention on Extradition, and that the request for the extradition of the

appellant was made in accordance with that Convention. He describes the process by which the Turkish Minister of Justice may transfer to another country a foreign prisoner who has been sentenced in Turkey, and states that it is very likely that a UK national extradited to Turkey would be repatriated to the UK as soon as possible if the UK authorities agree. He also refers to the possibility, again by mutual agreement, of a Turkish sentence being executed in the UK, and states that the Turkish Central Authority is always ready and most amenable to cooperate in such arrangements. He adds however that –

> "… the Turkish local judicial authorities will have the final say in terms of transferring any criminal proceedings and the execution of the sentences."

The admissibility of the appellant's additional evidence:

33. Both Mr Cadman and Mr Josse referred to the familiar principles stated in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin). The appellant judicial authority in that case wished to rely, on appeal, on evidence which had not been before the District Judge. The statutory provision relevant to the circumstances of that case was section 29 (4) of the 2003 Act, but the terms of that section are identical to the provisions of section 104(4) of the Act in respect of extradition to category 2 territories. The judgment of the court, at paragraph 32, is in the following terms:

> "In our judgment, evidence which was "not available at the extradition hearing" means evidence which either did not exist at the time of the extradition hearing, or which was not at the disposal of the part wishing to adduce it and which he could with reasonable diligence have obtained. If it was at the party's disposal or could have been so obtained, it was available. It may on occasions be material to consider whether or when the party knew the case he had to meet. But a party taken by surprise is able to ask for an adjournment. In addition, the court needs to decide that, if the evidence had been adduced, the result would have been different resulting in the person's discharge. This is a strict test, consonant with the parliamentary intent and that of the Framework Decision, that extradition cases should be dealt with speedily and should not generally be held up by an attempt to introduce equivocal fresh evidence which was available to a diligent party at the extradition hearing. A party seeking to persuade the court that proposed evidence was not available should normally serve a witness statement explaining why it was not available."

At paragraph 35 of the judgment, the court added this:

> "Even for defendants, the court will not readily admit fresh

> evidence which they should have adduced before the District Judge and which is tendered to try and repair holes which should have been plugged before the District Judge, simply because it has a Human Rights label attached to it. The threshold remains high. The court must still be satisfied that the evidence would have resulted in the judge deciding the relevant question differently, so that he would not have ordered the defendant's discharge. In short, the fresh evidence must be decisive."

34. Mr Josse submitted that all this additional evidence was admissible. He submitted that the appellant should not be penalised for being slow to reveal the circumstances of a rape about which he has strong feelings of shame and disgust. It is, he submitted, unsurprising that such an account was not volunteered immediately. Mr Cadman did not object to the admission of the further expert evidence, and of a bundle of material relating to reports of human rights violations in Turkey following the attempted coup, but submitted that the appellant's further statement should not be admitted at this very late stage.

35. In my judgment, the additional expert evidence is admissible within the *Fenyvesi* principles: by its nature, it was not available at the time of the extradition hearing. The same cannot, however, be said of the appellant's further statement.

36. In my judgment, that statement contains evidence which was available at the time of the extradition hearing, but which the appellant chose not to use. Assuming the statement to be true, the potential importance of the incident it describes must have been obvious to the appellant, and it was not suggested on the appellant's behalf that his mental condition was in any way causally linked to his decision not to mention it. The appellant therefore had a choice whether or not to include this evidence as part of his case. It may well have been a difficult choice for him to make; but having made it, and having conducted the proceedings below on the basis of that choice, it is much too late now for him to decide that he wants to conduct his case in a different way. In that regard, it is to be remembered that in the court below he did not give evidence, and so he now seeks to rely on a changed account in circumstances where his credibility has not been, and cannot now be, tested in cross-examination.

37. Moreover, the recent statement in my view raises more questions than it answers. If the appellant was raped as he says, it is perfectly understandable that he might be too ashamed and distressed to wish to reveal it to his wife or to a court. On the other hand, it is surprising that neither Dr Scheiner nor Dr Forrester said anything in their initial reports to suggest that he gave the impression of holding anything back from them, even when talking about sexual abuse of others in the Turkish prison. As Mr Cadman submitted, it is significant that the allegation of rape was made for the first time after the District Judge had ruled that the evidence did not show a likelihood of ill-treatment of sufficient severity to amount to a breach of Article 3. Moreover, it is a striking feature that the appellant's statement is not supported by any medical evidence: the only

document produced to this court as having any relevance in this regard indicates that the 2017 medical procedure to which the appellant referred was in fact related to haemorrhoids. The statement accordingly falls far short of satisfying me that, if it had been before the court at the extradition hearing, it would have resulted in the District Judge deciding any of the issues differently. I would therefore refuse to admit this evidence.

38. I accept Mr Josse's submission that a decision not to admit the appellant's own statement would not be fatal to this appeal. I therefore turn to the significant features of the additional expert evidence.

The additional expert evidence:

39. Dr Scheiner felt that the appellant's mental health had deteriorated in the 21 months since she had last assessed him. After learning that permission to appeal against the extradition order had been refused, he attempted to take his own life, and was referred to the local psychiatric crisis team. He presented as clinically depressed and highly anxious. He disclosed the rape to her in terms which she accepted as honest. It was her opinion that the appellant's vulnerability had increased and that, if extradited, he would make every attempt possible to end his life.

40. Professor Bowring's report is relied upon by Mr Josse as evidence of a deterioration in human rights in Turkey since the attempted coup. In my view however it was mainly concerned with issues of arbitrary detention of persons suspected of involvement in the coup or sympathetic to it, and of lack of judicial independence in Turkey following the attempted coup. Given that no complaint is made about the fairness of the appellant's trial, and that he absconded whilst serving a sentence about which also no complaint is made, I derive little assistance from this report.

41. Dr Forrester assessed the appellant about 18 months after he had first done so. The appellant disclosed the rape, and Dr Forrester also noted the appellant's attempt to commit suicide. Dr Forrester considered that his mental health had deteriorated in the intervening period. He was still being prescribed antidepressant medication, and attending for psychological treatment. Dr Forrester now diagnosed him as presenting with a severe depressive episode, and as still presenting with some features of PTSD. He remained of the opinion that the appellant's mental state would be likely to deteriorate further if extradited, and considered that the suicide risk would be high in the event of extradition. He concluded:

> "Given the nature of his condition, and the associated risk of suicide, [LMN] will also require ongoing treatment within the prison system in Turkey. Although I have no expert knowledge regarding Turkish prisons, or their healthcare services, I am of the opinion that [LMN] would require access to mental health services (including psychiatric and psychological care, and

> antidepressant medication). As outlined in … my earlier report, I remain of the view that he would require a system of coordinated care management in order to assist in managing his severe depressive episode, and the associated risk of suicide."

42. Before summarising Professor Morgan's report, it is convenient to mention his work in relation to *Charles*. Mr Charles, a homosexual man of UK nationality, had been convicted of raping a Turkish man in Turkey. He had absconded whilst awaiting trial in Turkey, and the Turkish government sought his return. Expert evidence was adduced on his behalf as to the conditions in Turkish prisons for LGBT prisoners. It was likely that, if extradited, he would serve his sentence in Maltepe 2. On the joint instructions of Mr Charles' solicitors and the CPS, Professor Morgan visited that prison in March 2015. He was given full access and allowed to speak with whomsoever he wished (including prisoners), and the prison governor answered all his questions. At that time, Maltepe 2 was substantially (30%) under-occupied. Professor Morgan did not inspect Maltepe 3, but understood that conditions there were very similar to Maltepe 2. His report commented in detail on the conditions in the units specifically provided in Maltepe 2 for LGBT prisoners. He concluded that the regime for such prisoners was impoverished, but that conditions would not be regarded as inhuman or degrading such as to breach Article 3.

43. That report was before the court at Mr Charles' extradition hearing. The court accepted assurances given on behalf of the Turkish government that Mr Charles would serve his sentence at Maltepe 2 and that, if a move to another prison became necessary, that other prison would take cognisance of his status as a foreign LGBT prisoner. Extradition was ordered.

44. It then became known that the LGBT unit at Maltepe 2 had been closed and the prisoners moved elsewhere, and it appeared that Mr Charles would serve his sentence at Maltepe 3. Professor Morgan was again instructed to report, and in March 2017 he visited Maltepe 3. He was again given wide access and full cooperation by the Turkish authorities. His report of that visit criticised the health care in Maltepe No3 as "grossly inadequate". It recorded that there were only one full time doctor, one nurse, two unqualified nurses, three psychologists and one social worker for a prison population of over 1,800, though there was within the same broad complex a prison hospital with a very large health care team. Professor Morgan in his conclusions emphasised that the current situation facing Mr Charles if extradited had become markedly different from that outlined in his previous report: the Maltepe 3 unit was "even more impoverished and discriminatory than that which existed in the Maltepe 2 LGBTI unit" and Mr Charles might well be accommodated in very cramped conditions.

45. Both of Professor Morgan's reports were before the Divisional Court in *Charles*. The appeal was allowed, the court concluding that extradition of Mr Charles would not be compatible with his Article 3 rights and therefore not compatible with section 87 of the 2003 Act. Irwin LJ, with whom Garnham J agreed, noted at paragraph 50 that until a

direct question had been asked on the point, the Turkish authorities had not volunteered the information that LGBTI prisoners at Maltepe 2 had been transferred to other penal institutions. Irwin LJ observed:

> "Had the appellant failed to challenge the decision of the court below, he would have been returned to Turkey to serve his sentence other than in the institution which had been closely examined in the hearing, and in respect of which clear assurances had been given. That is not to say that the Turkish authorities would have ignored the risks to this appellant had he been placed once more in the general prison population. In my view they would have been likely to place him in an LGBTI unit, probably Maltepe No3 as is now proposed. But the matter does raise genuine concern."

46. Submissions were made to the court in *Charles* about the assurances given by the Turkish authorities. The relevant principles are familiar from *Othman v United Kingdom* [2012] 55 EHRR 1, in particular at paragraph 189, where the court listed factors relevant to the necessary assessment of the quality of the assurances and of whether, in the light of the practices of the relevant state, they can be relied upon. Irwin LJ identified a number of concerns arising from the evidence, and at paragraph 53 concluded –

> "It follows that when considering the principles laid down in *Othman* paragraph 189, I find myself in some doubt as to whether the current assurances can be relied upon".

Mr Josse submitted that that was a strong conclusion for a court to reach in an extradition case.

47. Against that background, I turn to the report which Professor Morgan has prepared in this case. His opinion was sought on whether extradition to Turkey was likely to be incompatible with the appellant's Article 3 rights. Those representing the appellant requested, through the CPS, the permission of the Turkish government for Professor Morgan to visit and inspect Maltepe 2 and/or Maltepe 3, those being the prisons at which the appellant is likely to be held if extradited. So far as the material available to this court shows, that request was never definitively refused by the Turkish government; but, despite chasing messages, the request had gone unanswered for many months, with the result that Professor Morgan was not in fact able to inspect either prison. In his report, Professor Morgan contrasted that failure to permit him to visit with the wide access to Maltepe 2 and 3 which had previously been afforded to him in March 2015 and February 2017. He commented that –

> "This lack of openness is at one with developments characterising the Turkish authorities' current dealings with the United Nations and the Council of Europe."

48. Professor Morgan referred to the authoritative evidence which is provided, in relation to custodial conditions in Europe, by the European Committee for the Prevention of Torture ("CPT"). Turkey signed and ratified the European Convention on the Prevention of Torture in 1988. Amongst other things, that Convention gives the CPT an unfettered right to inspect all places of detention. Professor Morgan noted that Turkey has been visited by the CPT more frequently than any of the other state parties, a reflection of serious concern. Turkey has also twice been the subject of CPT Public Statements, described by Professor Morgan as "the rarely used most serious sanction available to the Committee in the event of a state party failing to cooperate with the Committee in efforts to prevent breaches of Article 3". He noted that the CPT has not found evidence of torture by prison staff in prisons, with most prisoners reporting that they were treated properly. However, there has in recent years been a dramatic increase in the Turkish prison population, and the CPT had been critical of the impoverished regimes often provided to categories of prisoners, including foreigners, who were considered to be in some way out of the ordinary.

49. Professor Morgan reported that, after a period of increasing openness, the Turkish authorities had recently shown a new "coyness…to reveal what is happening in custodial sites". He said that the new attitude was illustrated by the fact that he had not been granted access to Turkish prisons in current cases, which he regarded as consistent with information he had received to the effect that the Turkish Centre for Prison Studies, a prison monitoring human rights group, had also had access to prisons denied. He recorded his understanding that the Turkish Human Rights Commission was no longer functioning. He then referred to a report by Mr Melzer, the UN Special Rapporteur on Torture, a copy of which was before this court by agreement between the parties.

50. Mr Melzer had been permitted to visit prisons in Turkey in November and December 2016. He had heard numerous allegations of physical ill treatment; some supported by medical evidence, and had referred in his report to all but one of the prisons he had visited being significantly over crowded, with occupancy ranging from 125% to more than 200% of capacity. That overcrowding had a negative impact on access to the medical care which was in principle available to those who needed it. Mr Melzer had described a number of legislative developments in Turkey since the attempted coup, which had contributed to an environment in prisons conducive to ill treatment, and spoke of the stresses placed on the Turkish authorities as a result of the mass arrests which had followed the failed coup. Although Mr Melzer had acknowledged that in principle Turkey's institutions and legislation provide sufficient safeguards against torture and ill-treatment, he had said in his report:

> "During my interactions with inmates, lawyers and civil society representatives, I also received persistent allegations suggesting a serious discrepancy between the legal and procedural safeguards put in place and their actual implementation as far as the investigation of alleged violations is concerned."

Later in his report, he had said:

> "Although access to health care and dental and psychiatric support is guaranteed in principle, some improvements are required. In particular, the large facilities we visited have an insufficient number or presence time of General Practitioners compared to the number of detainees they are required to care for. This shortcoming is even more acute regarding dental care and psychological support. The supply and provisions of medicines is adequate …"

51. Professor Morgan recalled that in his 2015 report in relation to *Charles* he had not given any opinion about mainstream prisoner conditions at Maltepe 2 prison, because Mr Charles was not to be housed in such conditions. If he had been asked, he would have expressed the opinion that the mainstream conditions at that time were compliant with Article 3. By February 2017, however, the situation at Maltepe "had been transformed as a result of the July 2016 coup and the huge increase in the Turkish population". He noted from statistics published by the Turkey Ministry of Justice that the Turkish prison population had grown from 147,266 in 2013 to 187,609 in April 2016 and to 221,607 in May 2017. That growth was despite the fact that it had been reported that some 38,000 "ordinary criminal" prisoners had been released under an amnesty in order to accommodate those arrested after the failed coup. Professor Morgan suggested that reports of further arrests in summer 2017 could mean that the prison population was now significantly higher than that reported in May 2017. He felt that it would make no difference to this appellant's circumstances whether he were detained at Maltepe 2 or Maltepe 3, since they were identical in general design and he thought it likely that both prisons would now be overcrowded, though he could not say by how much.

52. In a section of the report on which Mr Josse heavily relied, Professor Morgan said –

> "7.3 General medical facilities and staff are extremely thin at Maltepe No 2 and No 3 prisons. There are no psychiatric staff, either doctors or nurses. The Turkish authorities emphasise that this is because there is an open prison hospital within the Maltepe penal complex to which prisoners needing such care can be taken or transferred for treatment if necessary and, in acute mental health cases, prisoner transfer to an outside psychiatric hospital can be arranged. However, it should be noted that one of the prisoners I interviewed in the dedicated LGTB unit at Maltepe No 3 prison in February 2017 was clearly in a distressed mental health state and she had been neither taken to the Maltepe prison hospital nor transferred. She appeared to be being given little or no mental health support.
>
> 7.4 I am unable to say how vulnerable [LMN], as an Iranian

> and Shia, as well as being suspected by the Turkish authorities of being a PKK activist or sympathiser, would be at Maltepe No 3 prison to ill treatment at the hands of either prison staff or fellow prisoners. I conclude that were he placed in an accommodation unit with prisoners unsympathetic to his nationality, religion, or actual or assumed political affiliations, he would be extremely vulnerable. Prisoners at both Maltepe No 2 and No 3 prisons are free to move around within their multi occupied units throughout the day, there is no dedicated staff supervision within each prisoner living unit, and a poor staff – prisoner ratio generally (in March 2015 at Maltepe No 2 prison there were 6 officers to supervise 15 prisoner living units housing 420 to 450 prisoners). I conclude that given [LMN's] reported mental health he would be extremely vulnerable to ill treatment at the hands of fellow prisoners at Maltepe.
>
> 7.4[sic] I conclude that there is a substantial risk that if [LMN] is extradited to Turkey that he will likely be held in conditions breaching Article 3. I also conclude that the Turkish authorities have provided no information, and have refused inspection access, such that the existence of this substantial risk might be dispelled."

53. I have noted above that the hearing of this appeal was originally fixed for December 2017, but was adjourned. There was at the time some issue between the parties as to when those representing the appellant had served the additional evidence and the skeleton argument. It is unnecessary now to consider that dispute in any detail. The important point for present purposes is that, on any view, the respondent had at least 4 weeks to respond to Professor Morgan's report. Moreover, Mr Josse's skeleton argument was available to the respondent during that period, and it must therefore have been clear to the respondent that the appellant would seek to rely heavily on Professor Morgan's report.

The submissions:

54. I am grateful to counsel for their submissions, which I summarise as follows.

55. Mr Josse relied on the written grounds of appeal criticising the District Judge's ruling in relation to Article 3. He acknowledged that the decision of the appellant not to give evidence could be regarded as a point against him, but submitted that the District Judge had given no reason for declining to accept Dr Forrester's diagnosis. He further submitted that the concession made, that the suicide risk did not provide a basis for a challenge to extradition under section 91 of the 2003 Act (oppression), did not mean that

the risk was irrelevant to the Article 3 issue. The District Judge was therefore wrong not to have assessed that risk.

56. In any event, Mr Josse submitted, the District Judge's decision had been overtaken by events. He relied, individually and collectively, on the two important developments in the case: the disclosure by the appellant that he was raped whilst serving his sentence, and the consequences of the attempted coup so far as prison conditions in Turkey, and the availability of appropriate healthcare, are concerned. He realistically acknowledged that the focus of his case is his submission that, in the light of recent developments, the District Judge made a wrong decision in relation to the appellant's Article 3 rights. He did not abandon his Article 8 points, but submitted that they overlapped with the submissions relating to Article 3.

57. Mr Josse's submissions focused on the personal circumstances and past experience of the appellant, and did not depend on criticisms of the Turkish prison regime generally.

58. Mr Josse submitted that Professor Morgan's work in relation to the present case shows a significant development. As I have indicated above, in the further information provided by the respondent for the purposes of the hearing before the District Judge, reference was made to the report of Professor Morgan in relation to Mr Charles' case. Mr Josse submitted, and I accept, that the respondent at that stage was in effect relying upon Professor Morgan's expert opinion to the effect that detention at Maltepe 2 would not involve a breach of Article 3 rights. However, it is now the appellant's solicitors who have instructed Professor Morgan to prepare a report with specific reference to this appeal; and the Turkish authorities have failed to grant his request for permission to visit Maltepe 2 or 3 and assess current conditions there. Mr Josse submitted that this is not just a change in the forensic circumstances: it is indicative of a change in the level of the risk that the appellant's Article 3 rights will be breached if he is returned to Turkey.

59. In this appeal, Mr Josse submitted, it could not be assumed that under present conditions a proper system of medical and psychiatric care is in place which would properly meet the appellant's needs. The respondent had not engaged with this issue. Although not the only question for the court, it was important to ask whether the respondent would provide proper treatment for the appellant's mental disorder if he were extradited. The substantial increase in the prison population since the attempted coup, of itself, gave rise to a real risk that it would not, and at the very least the court would have expected to be given some assurances by Turkey. There was nothing in the further information provided by the respondent which could be regarded as an assurance sufficient to meet this concern.

60. Mr Josse submitted that the only response made by the respondent to the additional evidence, namely the letters from Judge Altintas, did not address either Professor Morgan's evidence, or the reasons for the failure to give permission for Professor Morgan to visit Turkey and inspect Maltepe 2 and/or 3, or the consequences for this

appeal of the increase in the prison population. Nor did it offer any assurances about the medical and psychiatric treatment of the appellant. Mr Josse invited the court to conclude that the silence on those matters was deliberate and significant.

61. Mr Cadman helpfully made clear that the respondent had not put forward any assurance such as is contemplated in the *Othman* criteria. In his written submissions he had argued that the attempted coup is of no relevance to this appeal and that the appellant has failed to show how any response to the coup would impact upon his serving the remainder of his sentence. In his oral submissions, he emphasised that Turkey is a signatory to relevant international treaties and has appropriate institutions to investigate any ill-treatment of prisoners. He noted that the UN Special Rapporteur had been given full access to the prisons which he inspected. He submitted that Turkey has in place an effective mechanism for the investigation of any complaints, and pointed out that the appellant had not in fact made any complaint during his time in prison in Turkey.

62. Mr Cadman denied that there was any real risk of a breach of the appellant's Article 3 rights. He submitted that the appellant was convicted of a drugs offence unrelated to any political movement, and that there was nothing to suggest that the appellant had, or would be perceived to have had, any connection to the PKK or any involvement in the attempted coup. There was therefore no reason to think that the post-coup events would put him at any risk of ill-treatment by the authorities. He pointed out that, so far as any risk of ill-treatment by other prisoners is concerned, that in itself would not amount to a breach by the respondent of its obligation to respect the appellant's Article 3 rights: the appellant must show that the state would fail to provide him with reasonable protection against such acts.

63. Mr Cadman submitted that the respondent had conceded before the District Judge that the appellant may suffer some form of PTSD and may require some medical treatment, but he pointed to the continuing absence of any disclosure of the appellant's medical records or of any information about his ongoing counselling sessions with a psychologist. He noted that even Dr Forrester had not been provided with full medical records.

64. Mr Cadman's overall argument was that nothing has happened to change the position which was before the District Judge, and that there are no grounds for overturning his decision. The fresh evidence would not have caused the District Judge to reach any different decision. The appellant's fear of being returned to a Turkish prison does not come near to reaching the high threshold necessary to show a violation of Article 3. Neither PTSD nor depression is in itself a necessary bar to extradition: the question is, whether adequate medical care will be available. The respondent has indicated that the appellant would be examined on his arrival at prison, and would be given any necessary treatment; and the appellant has failed to show that he requires treatment which will not be available to him in Turkey.

65. In the alternative, Mr Cadman suggested that this court might remit the case under section 104(1)(b) of the 2003 Act, for a re-assessment by the District Judge of the Appellant's precise treatment needs and further information from the respondent as to its ability to meet those needs.

66. Mr Josse replied that that the respondent had at no stage either asked to see the appellant's medical records or asked for him to be examined by a psychiatrist instructed by the respondent. It would therefore be inappropriate to remit the matter when this court was able to reach a decision. He relied on the evidential position before this court: paragraph 7.4 of Professor Morgan's report (quoted in paragraph 52 above) showed a substantial risk that appropriate care and treatment would not be available to the appellant if he were returned, and the respondent had put nothing before the court to rebut that expert evidence.

Analysis:

67. It would be unlawful for this country to extradite the appellant to Turkey if he would there face a real risk of being treated in a manner which breached his Article 3 right not to be "subjected to torture or to inhuman or degrading treatment or punishment": see *R (Ullah) v Special Immigration Adjudicator* [2004] 2 AC 323. It is for the appellant to establish that there are substantial grounds for believing that, if extradited, he will face such a risk; and the ill-treatment must reach a minimum level of severity before Article 3 would be breached.

68. Given that Turkey is a member of the Council of Europe and a signatory to the European Convention on the Prevention of Torture, the respondent is entitled to rely on the presumption that the Turkish authorities will protect prisoners against breaches of their Article 3 rights. Mr Josse has not invited this court to decide the appeal on the basis of findings about the Turkish prison system as a whole, and in any event there is no evidence which would enable the court to do so. I therefore make it clear that my judgment is based on the individual circumstances of this appellant's case. The issue in my judgment - to be decided on the basis of all the evidence now available, including that which was not available to the District Judge - is this: despite the presumption in the respondent's favour, has the appellant shown substantial grounds for believing that if extradited to Turkey, he will be at real risk of a breach of his Article 3 rights?

69. I focus upon the Article 3 issue because, as Mr Josse effectively conceded, the appellant cannot succeed in his Article 8 submissions if he fails on Article 3. I have no doubt that there is a strong public interest in the extradition of this appellant. He was convicted of a serious offence, sentenced in a manner which took full account of the mitigating factors in his favour, and absconded at the point where he was being transferred to an open prison. If the evidence relevant to the Article 3 issue is set to one side, the appellant would not in my view be able to show that the District Judge fell into error in carrying out the Article 8 balancing act.

70. There are in my judgment two key aspects of the evidence relating to the Article 3 issue: the expert evidence as to the appellant's mental health; and the expert evidence as to prison conditions in Turkey following the attempted coup.

71. As to the first of those matters, with all respect to the District Judge, I am troubled by the manner in which he dealt with the psychiatric evidence which was before him. As I have noted in paragraph 20(ii) above, he did not accept the evidence as giving a definitive diagnosis of PTSD. That is understandable in respect of Dr Scheiner because, as the District Judge noted, she accepted that she was not a diagnostician. It may be understandable in respect of Dr Forrester, if it was intended as a reference to the fact that Dr Forrester only found some features of PTSD. However, the District Judge did not give any specific reason for rejecting the assessment that the appellant presented with some features of PTSD, merely saying that he accepted a submission by Mr Cadman that "there are different levels of severity of such a disorder". In addition, and in my view very importantly, Dr Forrester's evidence also included a clear diagnosis of a recognised medical condition, at that stage moderate-severe depressive episode for which the appellant was receiving medication. The District Judge noted that evidence, and noted Dr Forrester's professional qualifications; but he said no more about it, and did not say whether he included it in his rejection of a definitive diagnosis. If the District Judge did reject that part of Dr Forrester's evidence, which was uncontradicted by any expert evidence on the respondent's side, he gave no reason for doing so, merely making the observation that he was not aware of Dr Forrester having visited any prison in Turkey. Nor in his judgment did he address the significance of the diagnosis for the treatment which the appellant would require if extradited. I am bound to say that it seems to me that the District Judge focused on his doubts about the evidence of features of PTSD, and overlooked the significance of the diagnosis of a recognised medical condition which required treatment.

72. In any event, it is now necessary to take into account the additional expert evidence which is available, in particular the further opinion of Dr Forrester. He points to a deterioration in the appellant's mental health, and now diagnoses a severe depressive episode, for which continuing treatment and medication is required. I give less weight to the further report of Dr Scheiner, which does not seem to me to take matters any further; but Dr Forrester's diagnosis is in my view very important. It is, once again, uncontradicted by any expert evidence on the respondent's side, and there is in my view no basis on which Mr Cadman can cast doubt upon its reliability. This is not, for example, a case in which it could be said that the overall circumstances are such that the worsening of the appellant's mental condition is in any way surprising or unusual. Nor is it a case in which it would in my view be appropriate to remit the matter to the District Judge for him to consider further evidence: the respondent had sufficient time before this hearing to respond to the appellant's further evidence if it wished to do so.

73. Although the respondent questions whether any PTSD can be attributed to the appellant's experiences in the Turkish prison, as opposed to his other life experiences, the only evidence on the point is in the appellant's favour. No request has been made by the respondent for an opportunity for the appellant to be assessed by a psychiatrist or

psychologist instructed by the respondent.

74. In those circumstances, I accept the expert evidence now available as establishing that the appellant is presently suffering from a recognised medical condition, namely severe depressive episode; that he also presents some features of PTSD; that he is currently prescribed antidepressant medication, and in receipt of regular psychological counselling; that there is a continuing need for coordinated care management; and that there is a high risk of suicide in the event of extradition.

75. Turning to the second matter, the letters of Judge Altintas provide the basis for Mr Cadman to submit that, notwithstanding the attempted coup and the resultant state of emergency, Turkey abides by her fair trial obligations, and respects the human rights of defendants and prisoners. There was and is in my view no evidence that the appellant would be at risk of suffering from routine breaches by prison guards of the Article 3 rights of prisoners: the main concern appears to be that he would be at risk of violence by other prisoners which the prison guards either could not control (perhaps because of lack of resources) or would choose to ignore.

76. However, there is clear evidence from Professor Morgan, and to a lesser extent from Professor Bowring and some of the open source materials provided to this court, that since the hearing before the District Judge there has been a very substantial increase in the prison population in Turkey. I accept the respondent's submission that there is no substantial ground for thinking that the appellant would be at risk because he would be perceived as having been involved in or supportive of the attempted coup. But it is not the attempted coup in itself which is relevant in the particular circumstances of this case: it is the subsequent prison overcrowding.

77. Professor Morgan's evidence includes direct evidence, based on his visit to Maltepe 3 in March 2017, that at that time the provision of healthcare - in the prison which appears to be the one at which the appellant would most likely be detained - was grossly inadequate. The list of the available medical staff did not include any psychiatrist. The respondent would of course point to the evidence that medical care can if necessary be arranged outside the prison. That however is not a complete answer, because the rapid increase in the prison population would as a matter of common sense be expected to make it increasingly difficult for the prison authorities to respond appropriately to the healthcare needs of a particular prisoner – at any rate, without a very substantial increase in staffing and resources, of which there is no evidence. That expectation is confirmed by Professor Morgan's evidence at paragraphs 7.3 and 7.4 of his latest report, and by the report of the UN Special Rapporteur.

78. The appellant is not, of course, able to rely on direct evidence as to the present situation within Maltepe 3 and/or Maltepe 2, because no permission was granted for Professor Morgan to visit. In the circumstances of this case, however, I do not regard that as an obstacle to the appellant's case. The very fact that no permission was granted, despite

requests having been made some four months before this hearing, is significant in the context of evidence from Professor Morgan of a less open attitude on the part of the Turkish authorities. In addition, I agree with Mr Josse that it is highly significant that the respondent has not responded at all either to the evidence as to the appellant's healthcare needs or to the evidence as to prison overcrowding and the consequent effect on the provision of healthcare. The most recent further information makes no mention of Professor Morgan's evidence, does not address the effect on the prison system in Turkey of the increased numbers incarcerated since the attempted coup, and includes no evidence about the current state of prisons or even about the current size of the prison population. Mr Cadman is correct in his submission that this is not a case in which any formal assurance has been offered, and the respondent's case is therefore not assisted by any such assurance.

79. I emphasise that I am not here seeking to make any general assessment of Turkish prison conditions or to say anything about questions which may arise in other extradition proceedings: I limit myself to the present case. But here, there is evidence of mental illness and an absence of evidence as to the current availability of the appropriate healthcare in the context of an increasing prison population and increasing strain on prison resources in Turkey. In this respect, I do not think the presumption that the respondent will comply with its obligations is sufficient in the face of the rebutting evidence adduced by the appellant as to the effect of the attempted coup on prison conditions.

80. The further evidence now before the court shows, as I have indicated, a continuing need for medication and healthcare. The appellant has very plainly raised the issues of whether his healthcare needs would in fact be met, and whether the healthcare which is in principle available in Turkish prisons would in fact be available to the appellant in the context of the greatly-increased prison population. There is simply no evidence that such care will be available to him. The need for such evidence has been obvious for at least several weeks before this hearing, and that period was long enough for the respondent to obtain the letters from Judge Altintas. But those letters, as I have said, are conspicuously silent on this crucial issue. The failure of the respondent to address these points, when their importance must have been obvious, is worrying. Perhaps there is a complete answer; but if so, it has not been given. The absence of any response to these key points raises the concern that no satisfactory response can be given.

81. In my judgment, taking into account the risk of suicide, a failure to meet the mental healthcare needs of the appellant would in the circumstances of this case attain the minimum standard of severity necessary to breach his Article 3 rights.

Conclusion:

82. For those reasons, although I have hesitated before coming to this conclusion, I am persuaded by the further evidence of Dr Forrester and Professor Morgan that there are

substantial grounds for believing that if the appellant were extradited, he would face a real risk of a breach of his Article 3 rights. It follows that his extradition would not be compatible with Article 3 or with section 87 of the 2003 Act.

83. I would therefore allow this appeal, quash the order for the appellant's extradition and order his discharge.

Mr Justice Jay:

84. I agree.