

<u>IN THE HIGH COURT OF JUSTICE</u>	
<u>QUEEN'S BENCH DIVISION</u>	<u>CO/2520/2018</u>
<u>ADMINISTRATIVE COURT</u>	<u>CO/4125/2017</u>
<i>[2018] EWHC 3840 (Admin)</i>	

Royal Courts of Justice

Wednesday 19<sup>th</sup> December 2018

Before:

LORD JUSTICE BEAN

MR JUSTICE NICOL

B E T W E E N :

(1) SZALAI

(2) ZABOLOTNYI Appellants

- and -

(1) TRIBUNAL OF VESZPRE, HUNGARY

(2) MATEZALKA DISTRICT COURT, HUNGARY Respondents

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**J U D G M E N T**

**A P P E A R A N C E S**

MR J HALL QC and MISS F IVESON (instructed by McMillan Williams) appeared

on behalf of the Appellant Szalai.

MR J HALL QC and MR B SEIFERT (instructed by Sann McMillan) appeared on behalf of the Appellant Zabolotnyi.

MR J HINES QC and MISS A BOSTOCK (instructed by Crown Prosecution Service, Extradition Unit) appeared on behalf of the Respondents.

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LORD JUSTICE BEAN:

1 We have before us today appeals against orders for extradition to Hungary by two appellants whose cases are unconnected save by the issues of principle which arise under Article 3 and assurances given by the Hungarian Government in respect of prison conditions. We indicated earlier today that one issue raised in both appeals was of such significance that it should be adjourned to be heard by a threejudge constitution of this court. We shall give any necessary directions in respect of the further conduct of the two conjoined appeals later.

2 But we also have before us an application by Mr Szalai alone which relates to his case only, and in particular to the issue of whether his mental health is such that it would be contrary to Article 8 or a breach of section 25 of the Extradition Act 2003 for him to be returned to Hungary. When permission was granted by Mr Justice Julian Knowles in Mr Szalai's case it was granted on both Article 3 and Article 8 grounds. Mr Justice Julian Knowles also granted an application for funding for a further psychiatric report to be completed by Dr Agarwal. Based on that report and a supplementary report which goes with it, Mr Jonathan Hall QC and Ms Florence Iveson, on behalf of Mr Szalai, apply to amend the grounds of appeal to add an argument based on section 25 and also seek leave to adduce the report and supplementary report of Dr Agarwal as fresh evidence.

3 The decision from which Mr Szalai appeals was that of District Judge Snow given on 22 June 2018. He considered a number of points which are not material to the present issue. He set out section 25 at paragraph [19], referred to the well known decision of the House of Lords in *Kakis v Government of the Republic of Cyprus* as to the definition of what is unjust and oppressive, and went on to consider the applicability of that test to suicide cases and the authorities on that subject. He referred to *Jansons v Latvia* [2009] EWHC 1845 Admin which, in turn, cited a previous judgment of this court in *Kwietniewski v Circuit Court, Tarnobrzeg, Poland* [2008] EWHC 3121 Admin. He noted that in the decision of the Court of Appeal in *J v Secretary of State for the Home Department* [2005] EWCA Civ 629 the court had said

that the test that must be met by the appellant in a case of this kind is an extremely high one. Then at paragraphs [25]-[26] he set out extensive extracts from the judgments of this court in *Turner v Government of the United States of America* [2012] EWHC 2426 Admin and *Wolkowicz v Poland* [2013] EWHC 102 Admin; [2013] 1 WLR 2402. The former is summarised in the latter.

4I need not set out all the aspects of what was said in those cases, but I note in particular paragraph [28] of *Turner*:

".....4 The mental condition of the person must be such that it removes his capacity to resist the impulse to commit suicide otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying, and if that is the case there is no oppression in ordering extradition.

5 On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression?

6 Are there appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the person's mental condition and the risk of suicide?"

5Turning to *Wolkowicz*, at paragraph 10(iii) Sir John Thomas PQBD said:

"When the requested person is received by the requesting state in a custodial institution in which he is to be held, it will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide in the absence of strong evidence to the contrary."

The President referred to previous authorities and continued:

"In the absence of evidence to the necessary standard that calls into question the ability of the receiving state to discharge its responsibilities or a specific matter that gives cause for concern, it should not be necessary to require any assurances from requesting states within the European Union. It will, therefore, ordinarily be sufficient to rely on the presumption. It is, therefore, only in a very rare case that a requested person will be likely to establish measures to prevent a substantial risk of suicide will not be effective."

6The evidence of Dr Agarwal is contained principally in his report of 29 November 2018. The paragraph represents the high point of Mr Hall's submissions is paragraph 6.11. He said he had been asked to comment on how great is the risk that Mr Szalai will attempt to commit suicide if he is extradited. Dr Agarwal wrote:

"6.11 Mr Szalai has expressed suicidal thoughts whilst being in prison and he has required continuous monitoring within the prison environment. In the event of his being extradited to Hungary he has reported that he would attempt suicide. In my opinion if he were to be extradited it is likely that Mr Szalai's risk of suicide would exacerbate due to deterioration of his depressive disorder and lack of support from the local charity. Therefore, as elucidated earlier, in the event of Mr Szalai being extradited to Hungary his depressive disorder is likely to deteriorate from moderate to a severe degree thereby increasing the severity of his suicidal feelings. In such circumstances his capacity to resist the impulse to commit suicide is likely to be attenuated to an extent that the risk of completed suicide is significantly high, thereby leading to fatal consequences."

I should also refer to the following paragraph:

"6.12 In my opinion if Mr Szalai were to be extradited to Hungary his depressive disorder is likely to deteriorate to an extent that he would experience severe symptoms of depression which is likely to impair his motivation, his energy levels, his selfconfidence and selfesteem. In such circumstances he is unlikely to voluntarily and constructively engage with any support offered by mental health services within Hungary due to exacerbation of his symptoms, i.e lack of motivation, hopelessness, worthlessness, core energy levels, which would have a significant negative impact on his mental disorder, consequently diminishing his motivation to engage in treatment, thereby increasing his risk of suicide. Further, it is my opinion that exacerbation of his depressive disorder is likely to increase his thoughts of suicide leading to potential fatal consequences. Therefore, on balance, it is my opinion that Mr Szalai's ability to cope is likely to attenuate significantly if he were to be extradited to Hungary."

7In a supplementary report he was asked to comment on a finding by the District Judge that the only evidence of Mr Szalai's alleged suicidal tendencies came from him and was entirely selfserving and that the requested person had failed to demonstrate a real risk to his physical or mental condition. He was also asked to comment on the medical report by Dr Iain Kooyan dated 17 September 2018 which said, among other things:

"It is difficult to assess the risk of him completing suicide but this appears low at the current time."

8Dr Agarwal remained unmoved by these two expressions of opinion and says that he does not change his opinion in relation to the diagnosis or prognosis contained in his report of 29 November 2018, and in the following paragraph he states his opinion that Mr Szalai

" ..... suffers from moderate episodes of depressive disorder associated with panic disorder"

and that these are both mental disorders within the meaning of Part I of the Mental Health Act 1983, as amended.

9For my part, I do not think that the evidence of Dr Agarwal comes anywhere near surmounting the very demanding tests set by this court in, for example, *Turner* and *Wolkowicz*. Certainly, it does not lead me to say that this is a case in which, if Mr Szalai were to be extradited to Hungary, there is convincing evidence to rebut the presumption that a requesting state within the European Union has sufficient medical facilities available to treat conditions of this kind.

10I would, therefore, refuse the applications to admit the evidence of Dr Agarwal and to amend the grounds of appeal to allege breaches of section 25.

11MR JUSTICE NICOL: I agree.

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