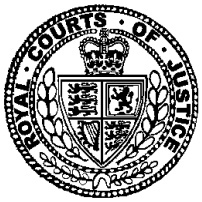

Neutral Citation Number: [2023] EWHC 1596 (Admin)

Case No: CO/4283/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/06/2023

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between :

MARIUSZ SZENTAK **Applicant**

- and –

REGIONAL COURT OF LUBLIN (POLAND) **Respondent**

- -
- -

Mr Martin Henley (instructed by AM International Solicitors) for the Claimant
Mr Jonathan Swain (instructed by the Crown Prosecution Service) for the Defendant

Hearing date: 23rd February 2023 (adjourned)

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 28th June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice:

Background

1. Mr Szentak's extradition to Poland was sought by way of a conviction warrant issued by the Polish judicial authority on 23rd June 2020 and certified by the National Crime Agency on 16th September 2020. The conviction was for an offence of assault committed on 15th October 2016. A sentence of one year and 6 months' imprisonment was imposed, all of which remains to be served.

2. His extradition was ordered by District Judge Zani, after a hearing, on 13th December 2021. He had resisted extradition on grounds including a medical condition causing back pain. In concluding that extradition would be consistent with Mr Szentak's rights under Article 8 of the European Convention on Human Rights, the District Judge observed:

> I have taken into account MS's medical issues. The most recent information provided to the court does not state that surgery is considered inevitable (and is certainly not imminent). He has been discharged from the Pain Management Clinic and he is continuing to take prescribed medication for his back pain. There is no suggestion that such (or similar) medication is not available in Poland.

3. Mr Szentak applied for permission to appeal on grounds including that the Judge had placed insufficient weight on his medical problems for the purposes of considering whether extradition was consistent with Article 8 ECHR.

4. Permission to appeal was refused on the papers by Cavanagh J on 11th March 2022. A renewed application for permission to appeal was lodged out of time, with a request for an extension of time. The application for an extension of time was refused on the papers by Wall J on 8th April 2022, including because he did not consider the proposed grounds of appeal reasonably arguable.

5. On 12th April 2022, understanding extradition to be imminent, Mr Szentak made a serious attempt to take his own life by hanging himself at home. He was fortuitously rescued (just in time) by a visitor, resuscitated by paramedics, and admitted to hospital. He was transferred to an inpatient psychiatric unit for assessment on 14th April, and discharged on 18th May 2022.

6. Mr Szentak made an application on 26th April 2022 to reopen his appeal. The application was heard by Saini J on 4th May 2022. The Judge gave directions for:

   - a 'rolled-up' hearing of (a) the application to reopen, and if granted (b) the application for permission to appeal, and if granted (c) the substantive appeal;

   - Mr Szentak not to be removed in the meantime; and

   - the disclosure of Mr Szentak's medical records, and the obtaining of an expert psychiatric report.

7. A psychiatric report was obtained on 13th July 2022 from Dr Pamela Walters, consultant in forensic and addiction psychiatry. It records an account of Mr Szentak's having been involved in two traumatic car crashes, in 2000 and in 2004, in one of which a friend was killed, and which caused spinal injury and an associated chronic pain condition. A related diagnosis of depression had been made in 2019, following a suicide attempt in 2018. Dr Walters considered Mr Szentak to be exhibiting symptoms of post-traumatic stress disorder, and also diagnosed moderately severe depression. She considered this 'psychiatric dual pathology' to be complicated by his poor physical health and chronic pain. She considered that treating Mr Szentak's chronic pain issues, and his PTSD, would lead to better outcomes for managing his depression; in the absence of such treatment his prognosis would be poor and would increase the risk of suicidal thoughts and actions, and there would be an extremely high risk of further deterioration. She considered there to be a high risk of his completing a suicide, and that extradition would be a trigger for him contemplating it.

8. Mr Szentak's medical records were obtained in October 2022. They included a letter of 25th May 2022 from Mr Rath, his spinal neurosurgeon, indicating that he had been offered spinal surgery and was on a waiting list for an operation.

Legal framework

(a) Reopening extradition appeals

9. Criminal Procedure Rule 50.27 makes provision in relation to an application to reopen an extradition appeal as follows:

> **Reopening the determination of an appeal**
>
> 50.27.—(1) This rule applies where a party wants the High Court to reopen a decision of that court which determines an appeal or an application for permission to appeal.
>
> (2) Such a party must—
>
> (a) apply in writing for permission to reopen that decision, as soon as practicable after becoming aware of the grounds for doing so; and
>
> (b) serve the application on the High Court officer and every other party.
>
> (3) The application must—
>
> (a) specify the decision which the applicant wants the court to reopen; and
>
> (b) give reasons why—
>
> (i) it is necessary for the court to reopen that decision in order to avoid real injustice,

> (ii) the circumstances are exceptional and make it appropriate to reopen the decision, and
>
> (iii) there is no alternative effective remedy.
>
> (4) The court must not give permission to reopen a decision unless each other party has had an opportunity to make representations.

10. Guidance on this test was provided by the Divisional Court in its 'supplementary judgment' in *USA v Bowen [2015] EWHC 1873 (Admin)* at [6]-[9], including as follows:

> 7. … In *McIntyre v Government of the United States* [2014] EWHC 1886 (Admin) at [11] Lord Thomas CJ identified the principles which should apply to the question whether exceptionally to avoid real injustice an application under section 108 should be heard by this court:
>
> "The court should simply give effect to the statutory language having regard to its statutory context and purpose:
>
> i) It is well established that all issues relating to the extradition of a requested person under Part 2 of the 2003 Act should be raised at the extradition hearing before the District Judge.
>
> ii) On any appeal to the Divisional Court the court only considers such issues as have been raised, subject to s.106(5) (a) and (b) of the 2003 Act, as explained by Sir Anthony May PQBD in *Hungarian Judicial Authorities v Fenyvesi* [2009] EWHC 231 (Admin) at paragraphs 32-35 in relation to the equivalent provision in Part 1 (s.29(4) (a) and (b)).
>
> iii) The decision on the extradition hearing (if there is no appeal) or of the Divisional Court or Supreme Court (if there is an appeal) is intended to bring finality to the extradition proceedings; the Home Secretary is thereafter under an obligation to extradite within strict time limits.
>
> iv) Exceptionally events can occur after the decision on the extradition hearing (if there is no appeal) or of the Divisional Court or of the Supreme Court (on any appeal) which would make extradition incompatible with the requested person's human rights.
>
> v) It was determined by Parliament that it is not apposite that the jurisdiction to determine these issues should remain with the Home Secretary.
>
> vi) The provisions of s.108 (5)-(8) are therefore intended to permit the determination of such issues by the courts by way

of an appeal. The express language of the new provisions makes it clear a court can only consider such an appeal if it is both necessary to avoid a real injustice and the circumstances are exceptional and make it appropriate to consider the appeal.

vii) It is not necessary to embellish that language. It is evident from the statutory purposes that a requested person will ordinarily have to establish that the issue arises as a result of a supervening development or event. It will also be necessary to provide a reasonable explanation why the issue was not anticipated at the extradition hearing or on any appeal.

viii) Any application under s.108(5)-(8) must be brought promptly. The evidence relied on should be filed with the application or within a period immediately thereafter to be measured in days, not weeks. The court must make arrangements for the rapid hearing of the application. It may be desirable for appropriate directions to be given immediately in writing by the Master of the Administrative Court. Strict compliance with the directions must be observed (or a variation sought from the court). The matter should generally be determined at a single hearing to avoid delay. However, though such applications will be rare, the practice we have outlined should be reviewed in the light of experience.

ix) Applications under the new provisions must not be used to bring about undue delay to the process of extradition."

8. In our judgment these principles apply with necessary modifications to an application to reopen under the Crim PR. Such an application is not limited to Human Rights grounds. Subparagraph (v) has no application in the context of this case nor (viii), in the first instance, because Crim PR [50].27 envisages a leave stage, which will be conducted on paper. There is, in addition under this rule, the requirement that there should be no alternative effective remedy. It is very difficult to envisage that such an application could be made whilst there is an outstanding application for certification.

9. We would draw particular attention to the expectation that the jurisdiction under Crim PR [50].27 will not be exercised unless something has developed after the determination of the appeal. The jurisdiction is not designed to allow a disappointed party to the appeal to reconsider his arguments, material and evidence and come back to the court to have another go. Furthermore, we would emphasise the importance of finality in extradition cases by noting the observations of Lord Thomas in *Abu Hamza v Government of the United States of America* [2012] EWHC 2736 (Admin) at [21] and [22], namely that there is an overwhelming public interest in both the proper functioning of extradition

arrangements and in honouring extradition treaties as well as there being an equally high importance in the finality of litigation. Finality of litigation is particularly important in extradition cases:

> "because of the public interest in an efficient process, the need to adhere to international obligations and to avoid a recurrence of the delays which have so disfigured the extradition process in the past and to which successive appeals over time can subject it."

(b) Extradition appeals

11. The Extradition Act 2003 provides as follows in relation to appeals to the High Court against the making of an extradition order:

> **27. Court's powers on appeal under section 26**
>
> (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.
>
> (5) If the court allows the appeal it must—

(a) order the person's discharge;

(b) quash the order for his extradition.

(c) Determination of extradition cases - medical issues

12. Medical issues are of relevance to the determination of extradition cases in two principal contexts.

13. Where extradition is resisted on the ground that it would represent a disproportionate interference with the requested person's rights under Article 8 of the European Convention on Human Rights, then issues relating to their health and medical condition may if relevant fall to be taken into account in the balancing exercise a court must undertake in accordance with the decision of the Divisional Court in *Polish Judicial Authorities v Celinski & Ors [2015] EWHC 1274 (Admin)*.

14. In addition, section 25 of the Extradition Act 2003 provides as follows:

> **25. Physical or mental condition**
>
> (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.

15. Julian Knowles J gave guidance on the correct approach a court should take to such cases in *Magiera v District Court of Krakow, Poland [2017] EWHC 2757 (Admin)* as follows:

> 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 be 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.

16. The Divisional Court in *Turner v Government of the USA [2012] EWHC 2426 (Admin)* provided further authoritative guidance on the correct approach in cases raising issues connecting mental health with suicide risk as follows:

> 28. There have been a number of cases in which the courts have considered what has to be established under section 91 of the Act (or the equivalent section in respect of an application for surrender under Part 1 of the Act, which is section 25) in order that a court may be satisfied that it would be unjust or oppressive to return a person to the state requesting extradition, because of the risk of suicide if the order to return were made. The relevant cases, which were recently examined with care by Bean J in

Marius Wrobel v Poland [2011] EWHC 374 at [17] establish the following propositions:

(1) the court has to form an overall judgment on the facts of the particular case: *United States v Tollman [2008] 3 All ER 150* at [50] per Moses LJ.

(2) A high threshold has to be reached in order to satisfy the court that a requested person's physical or mental condition is such that it would be unjust or oppressive to extradite him: *Howes v HM's Advocate [2010] SCL 341* and the cases there cited by Lord Reed in a judgment of the Inner House.

(3) The court must assess the mental condition of the person threatened with extradition and determine if it is linked to a risk of a suicide attempt if the extradition order were to be made. There has to be a "substantial risk that [the appellant] will commit suicide". The question is whether, on the evidence the risk of the appellant succeeding in committing suicide, whatever steps are taken is sufficiently great to result in a finding of oppression: see *Jansons v Latvia [2009] EWHC 1845* at [24] and [29].

(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: *Rot v District Court of Lubin, Poland [2010] EWHC 1820* at [13] per Mitting J.

(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: *ibid.*

(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: *ibid* at [26].

(7) There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind: *Norris v Government of the USA (No 2) [2010] 2 AC 487.*

The rolled-up hearing

17. The application to reopen Mr Szentak's appeal was listed before me on 23rd February 2023. Mr Henley, Counsel for Mr Szentak, accepted that the CrimPR 50.27 test ('*necessary to avoid real injustice*', exceptional circumstances *and* no alternative

remedy) sets a high bar. He invited me not to 'go behind' the decision of DJ Zani, but he submitted that the bar was cleared in the present case on the basis of the key developments since the appeal process was brought to an effective end on 8th April 2022: Mr Szentak's suicide attempt a few days later, and the material provided for by Saini J (Dr Walters' report, and the disclosure of Mr Szentak's complete medical records). He said that what we now know about Mr Szentak's condition reveals material matters unforeseen by DJ Zani in ordering extradition, or by Cavanagh J and Wall J in refusing permission for an appeal, and which must, with hindsight, vitiate the justice of the decisions they made.

18. Mr Henley focused on the Article 8 basis for preventing extradition, relying on the weighting of the health and wellbeing issues. He did not seek to make a case that the s.25 test ('*physical or mental condition is such that it would be unjust or oppressive to extradite him*') was met; he described that test, in the light of the decided authorities, as setting a 'frighteningly high bar'. He also accepted that, although he considered the suicide attempt highly material and there was evidence of a high risk of future suicidal ideation, Dr Walters' opinion did not support a contention that the ***Turner*** test had been met: he did not seek to make a case that Mr Szentak's mental condition was '*such that it removes his capacity to resist the impulse to commit suicide*'.

19. Instead, Mr Henley submitted that, in the light of Dr Walters' report, DJ Zani had been wrong in hindsight to order extradition without resolving the neurosurgical outlook and without knowing if, or how, the Polish authorities would meet Mr Szentak's complex needs, of at least some of which he had been unaware. It was now, he said, apparent that without surgery (and recovery) Mr Szentak's psychiatric 'dual pathology', with its associated suicide risk, was likely to be unable to be treated, and therefore to deteriorate, with the risk of suicide therefore becoming increasingly acute. Had DJ Zani known about the serious suicide attempt in April 2022, the contents of Dr Walters' report with its diagnosis of PTSD and depression, the dependency of successful treatment for those conditions on resolving his pain condition, and the fact that Mr Szentak had been accepted for neurosurgery for that purpose - the Art.8 balance would have come down differently and Mr Szentak would have been discharged from extradition.

20. Mr Henley urged on me the necessity, as guided by ***Magiera***, to subject the health and wellbeing issues in this case to '*intense focus*'. He acknowledged that Mr Szentak had now been on the neurosurgery waiting list for some time: a possible date for surgery in September 2022 had been postponed with an indication of possible rescheduling in the 2023 'new year', but by the hearing in February 2023 no better information was available. However he pointed to the complete lack of information, at the same time, about how the Polish authorities would meet Mr Szentak's medical needs. All that was available by way of assurances from them was a reference to (but not the detail of) their general policy on suicide prevention in prison.

21. He asked me accordingly to reopen Mr Szentak's appeal and either determine it in his favour or, in the alternative, adjourn these extradition proceedings pending medical outcomes, allowing time for Mr Szentak to reach the front of the queue for his neurosurgery, complete the operation and rehabilitation, and so enable his mental condition to be treated.

22. I accepted for the purposes of the hearing that Mr Szentak's health issues were towards to the 'more complex' end of the spectrum. I concluded, after hearing submissions,

that in order to determine this application in accordance with the guidance set out in *Magiera*, the necessary '*intense focus*' on the detail of the facts required more in the way of information than was available at the hearing. In reaching that conclusion, I noted the three stage process set out in paragraph 32 in that case, the second of which requires the court '*to assess the extent to which any adverse effects or hardship*' arising from extradition '*can be met by the requesting state providing medical care or other arrangements*'. I also noted what was said in paragraph 34 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.*'

23. In particular, to the extent that the application turned on (a) the likely timing of neurosurgery in the UK and the prognosis thereafter and (b) the ability of the Polish authorities to meet Mr Szentak's specific health and wellbeing needs, I was clear that it was not in the interests of justice to proceed without establishing the facts in both respects. I noted also the indication at paragraph 36 of *Magiera* that the authorities in the requesting state should be provided with the requested person's medical details so they have a proper understanding of what the health issues are and can respond in a case-specific manner.

24. I therefore adjourned the proceedings with directions for further evidence to be provided by Mr Rath, and by the Polish authorities, for the assistance of the court. I made provision for a set of specific questions to be put to each, and for the parties thereafter to be able to make further written submissions in relation to the new evidence in due course.

The further evidence

(a) Mr Rath

25. In a brief letter of 6th April 2023, Mr Rath, consultant orthopaedic spinal surgeon at the Walton Centre NHS Foundation Trust in Liverpool, confirms that Mr Szentak is on a waiting list for L5/S1 Transforaminal Lumbar Interbody Fusion (TLIF) back surgery. I understand that to be a form of spinal fusion surgery, the purpose of which is to alleviate chronic, moderate to severe, back pain.

26. Mr Rath describes this as an elective procedure, likely to require an inpatient hospital stay of between two and seven days. Following surgery, Mr Szentak would be expected to mobilise and return home with a recovery period of six to eight weeks, with exercises advised (physiotherapy is not routine). The wound would be reviewed and sutures removed at the GP practice about two weeks after surgery. Post-operative x-ray appointments would be needed at the three month, one year and two year points.

27. Mr Rath says he does not have 'a precise date' for this surgery 'as it is based on the waiting list'. Despite being directed by my order to answer the questions: '*When is Mr Szentak likely to be called for surgery on his spine? If a precise date is unknown can you give a time window when the surgery is likely to take place?*', Mr Rath gives no

further information, and offers no view, as to timing or as to the nature of the waiting list.

(b) The Polish authorities

28. The 'request for further information' (RFFI) to the Polish authorities enclosed and summarised Dr Walters' report, drawing attention to the mental health issues identified there, to the fact that they were said to be closely linked to Mr Szentak's continuing chronic pain, and to the substantial suicide risk also identified.

29. The RFFI continued:

> Please can you provide further information detailing how the Polish authorities would propose to address the particular needs of Mr Szentak if he were extradited.
>
> This should include:
>
> i. Whether he would be able to access the specified surgery above ("L5/S1 TLIF [Transforaminal Lumbar Interbody Fusion] with posterolateral fusion").
>
> ii. If so, what would the likely waiting time be for that surgery to be provided?
>
> iii. How it is proposed that the prison would manage Mr Szentak's particular mental health needs, as identified by Dr Walters, if he were to be extradited to Poland prior to the surgery taking place?
>
> iv. Please can a copy of "instruction No. 10/20 of the Executive of the Prison Service of 5th November 2020", referred to in your letter of 08 September 2022, be provided.
>
> The information requested is therefore intended to be specific to the identified difficulties faced by Mr Szentak, rather than matters of general application to detained persons suffering from physical and mental health issues, or who pose a suicide risk.

30. By letter of 22nd March 2023, the Polish authorities confirmed that, on surrender to Poland, Mr Szentak would be given '*all the necessary medical aid*'. He would be thoroughly examined by prison service doctors. '*The decision on what kind of operation and its potential date*' would be made after that examination. He would be able to take advantage of '*all the necessary forms of medical treatment*'. A wide spectrum of medical operations was available, with good specialists in surgery, orthopaedics and physiotherapy.

31. The Polish authorities' letter also confirmed that (a) '*if his condition did not allow to serve the penalty in prison isolation, the execution of the penalty might be postponed*

or the convict might be given a break in serving the penalty until his physical and mental condition is better'; and (b) '*the length of the penalty to be served by Mariusz Szentak entitles him to lodge a motion for serving the punishment in a mode of the electronic monitoring system in domestic (home) conditions*'.

32. The Polish authorities' letter also enclosed, as requested, a complete copy of its policy on suicide prevention in prisons. That confirms that risk management regimes are responsive to individuals' circumstances with the most intensive monitoring and support provided to those with a history of previous attempts and at highest risk. It provides, in such cases, for '*ensuring accessibility to medical, educational and psychological care*', individual mental health, including psychiatric, care as appropriate, and supervision and monitoring up to and including on a continuous basis. Detailed provision is made as to the engagement of health professionals as necessary, and in particular in relation to particularly high-risk moments including on first admission.

(c) The parties' further submissions in response

33. Mr Henley's written submissions of 21st April 2023 say that the new information does not get to grips with what Dr Walters' report said about the link between Mr Szentak's pain condition, his mental health, and his suicidal ideation. He characterises the Polish authorities' response as confirming that the necessary resources to treat both the physical and mental health issues are in principle available, but that what would happen in practice would depend on a 'start from scratch' assessment with no indication of when any surgery could be undertaken. He says the outlook in the UK is 'far more certain' even if, as a result of the covid pandemic and economic conditions, NHS waiting lists for elective surgery are an issue in themselves. He points out that Mr Szentak would not have the support of his UK-based wife and daughter in Poland and that, as Dr Walters had indicated, he is likely to suffer a serious deterioration in his mental health if extradited to Poland without surgery and treatment in the UK. To do so, he submits, would be a disproportionate interference with his Art.8 rights.

34. Mr Swain, Counsel for the requesting state, sets out the Polish authorities' position on the new material in his written submissions of 24th April 2023. He points out that Mr Rath has confirmed that Mr Szentak is on a waiting list of uncertain duration for elective surgery. There is no indication that he is regarded as a priority case or that the surgery is considered to be an urgent need. If, on the promised full medical examination, the Polish authorities concur in the UK medical view that the specified operation is indicated, it can apparently be provided, and there is nothing to say the process would take any longer than in the UK. Mr Szentak would not be 'starting from scratch': his full medical notes would be available to the Polish authorities. Mr Rath also confirms that the post-surgery aftercare requirements are simple and minimal.

35. Mr Swain draws attention to what is said in the suicide provision policy in particular as to (a) steps to be taken to raise issues immediately where there is a suggestion of a suicide threat, (b) immediate referral to a psychologist, (c) cells for the special monitoring of individuals who are at risk, (d) the provision of psychological aid including regular monitoring and (e) tailored support more generally.

36. He submits that the Polish authorities' response is comprehensive: Mr Szentak will be properly examined on arrival, accommodated as necessary, provided with specialist

treatment appropriate to his individual needs, and the treatments recommended or potentially recommended for him are available.

Consideration

37. Mr Szentak's health predicament is obviously troubling and must evoke sympathy. It was sufficiently troubling for both Saini J and me to take the relatively unusual steps of facilitating or directing the admission of new evidence, including as to developments since the determination of his appeal proceedings, in order for the Court to apply the *intense focus* on the specific facts of his health circumstances the authorities indicate. I adjourned the rolled-up hearing, bearing in mind what is said at paragraph 35 in *Magiera*, because it appeared to me that Mr Szentak's evidenced state of health and wellbeing was sufficiently troubling, and its treatment or management sufficiently complex, to require more detail before determining the matters before me.

38. The parties do not now suggest that any more information is necessary, desirable or available in order to proceed to conclude the case.

39. Not all of the new information, strictly speaking, postdates the determination of the appeal. DJ Zani was aware of Mr Szentak's back-pain problem. He himself adjourned the proceedings before him part-heard, to obtain up-to-date information about it. He was aware of the interim arrangements for managing it with medication. Medical records were available.

40. But we do have a more detailed picture now. We know, from Dr Walters' report, that Mr Szentak has mental health problems: he has been diagnosed with PTSD and moderately severe depression. We know that these are linked to and complicated by his spinal injuries and pain condition. We know from Mr Rath that he has been recommended for spinal surgery to alleviate the pain. Dr Walters says that the effective treatment of his mental health problems needs to start with addressing the pain issue. She says that failure or delay in doing so risks his mental health deteriorating. We know – from Dr Walters' report and from his recent history – that Mr Szentak's mental health problems include suicidal risk and express themselves in attempted suicide.

41. Mr Henley does not dispute that we also know, from the assurances given by the Polish authorities, that resources are available in Poland to assess and treat both Mr Szentak's physical and mental health problems, including his expression of them in making suicide attempts. But he argues extradition should not be permitted for two principal reasons. First, Mr Szentak has in the UK already been referred for surgery, whereas if extradited he faces uncertainty as to whether he would be referred for surgery and if so when. Delay in surgery increases the risk of deterioration in his mental health. Second, extradition and incarceration are themselves stressful experiences which in any event increase the risk of deterioration in mental health to a degree not foreseen before the termination of the appeal proceedings.

42. Concerning the first of these, I cannot but agree with Mr Swain that the new information does not support the factual premise on which Mr Henley's submissions rely. That is because we do not have *any* idea about when, if Mr Szentak were not extradited, surgery would take place in the UK. Had Mr Rath given the least indication of timescale, or of how the waiting list works, some inferences might have been possible from that. But

as it is, there is no basis before the Court on which it is possible to infer anything about surgery timescales either in Poland or in the UK.

43. I cannot proceed on a simplistic basis that Mr Szentak is in a queue in the UK, would 'lose his place' in it if extradited, and would have to 'start from scratch' on any Polish waiting list. Waiting lists for elective surgery must be taken to be under some form of medical oversight and to bear at least some relationship to medically-assessed priority. It was not suggested that they just work on a mechanical first-come first-served basis. Even if they did, understanding 'progress to the front' would depend on knowing how may were ahead in the queue. I have been given no basis for assuming that time spent on a waiting list *by itself* guarantees the linearly progressive imminence of surgery – much less what degree of imminence. I have no basis at all on which to compare UK and Polish waiting lists. I have, in the end, been given no reason even to assume that surgery is likely to take place more quickly in the UK than in Poland.

44. I can see that it is in principle possible that on examination Polish doctors might come to a new decision on Mr Szentak's priority for surgery (either way) or might conclude that surgery is not indicated at all. But these are medical decisions. The Polish doctors can be expected to take them in the light of Mr Szentak's condition at the time of the examination, and of his medical history including the basis on which he was referred for surgery in the UK. If this is something about which more than one professional medical view is possible, then it is not proper for a court to take speculative sides in such medical professional matters. The evidence before me is that Mr Szentak's back-pain issue will be professionally assessed on arrival in Poland, and appropriately treated. I am unable to infer that he will suffer any health detriment at all *in this respect* by being extradited.

45. Had the evidence indicated any such comparative detriment, then it would have been necessary to consider its nature and degree, and to reflect on the relevance, if any, of the fact that any advantage Mr Szentak enjoyed by virtue of being on a UK rather than a Polish healthcare system waiting list was founded on his fugitivity from justice, as determined by DJ Zaini. But as it is, the evidence does not require that exercise.

46. Turning then to Mr Szentak's mental health in its own right, we do know more about this now. We have Dr Walters' diagnoses, and her indication that, until the chronic pain issue is more effectively treated, his mental health is liable to deteriorate (and more than 10 months have already passed since her report was written). We, sadly, know more than we did about Mr Szentak's suicidal tendencies. And there is therefore an evidential basis for concluding that his mental health is significantly worse than was understood before his appeal process came to an end.

47. The evidence now before the Court is that the Polish authorities could and would implement appropriate suicide safeguarding in a prison environment for Mr Szentak. The evidence also gives no reason to conclude that he would now be disadvantaged by extradition in his mental health care and treatment more generally. The evidence indicates that the priority for treating his mental health is to alleviate his chronic pain problem, and, as discussed, there is no reason to make any inferences about the likely course of that either way.

48. Nevertheless, it is clear, in a manner and to a degree in which it was not before, that Mr Szentak is, by reason of the complex state of his health, a vulnerable individual. It is on that basis that I need to consider the applications he makes.

49. As already noted, Mr Henley does not suggest that, by reason of the fact that his mental health problems express themselves in suicidal tendencies, the ***Turner*** test is passed. He is right not to do so. Dr Walters' evidence is that Mr Szentak's '*current mental conditions with on-going suicidal ideation will impair his capacity to resist impulses to commit suicide to some degree*'. That falls some way short of the test that '*the mental condition of the person must be such that it removes his capacity to resist the impulse to commit suicide*'.

50. As already noted also, Mr Henley does not seek to rest his case on the s.25 test more generally. He does not say that Mr Szentak's '*physical or mental condition is such that it would be unjust or oppressive to extradite him*' per se. Instead, he says that the new information is such that it must tip the scales in the Art.8 balance against extradition.

51. The difficulty with this position, however, is that Mr Henley's case, of necessity, rests wholly on the new health information. Although he puts it on a basis of making a sufficient *cumulative* or *marginal* difference to the case that had been before DJ Zani, it is in reality a proposition that a man in Mr Szentak's physical and mental condition ought not, consistently with his Art.8 rights, to be extradited. But two notes of caution need to be sounded about that.

52. The first is that, reading his judgment, DJ Zani's conduct of the ***Celinski*** balancing exercise did not produce a finely-balanced decision. He gave considerable weight to the public interest in the UK's international standing in complying with requests properly made under extradition treaties to which it is a party, and not being considered a safe haven from justice. He gave weight to the relatively serious nature of Mr Szentak's offending. And he gave weight to Mr Szentak's status as a fugitive from justice – although he noted that *even if he were not* a fugitive the balance would come down in favour of extradition.

53. That is because on the other side of the balance *apart from the health issue* were considerations which were relatively slight in comparison: Mr Szentak's law abiding life in the UK over the preceding four years with his wife and teenage daughter.

54. That was a decision on the face of it (and in this I concur with Cavanagh J and Wall J) unimpeachable. So the question now really is almost entirely about the health issue. And framing it in Art.8 terms rather than s.25 terms is not necessarily a straightforward route to satisfying a less daunting standard than s.25's *unjust or oppressive* test.

55. That is because the second note of caution is that, daunting though the s.25 test may be, the CrimPR 50.27 test is no less so. The test for reopening an extradition appeal is a stringent one, for all the reasons set out in ***Bowen***. It must be *necessary* to do so to avoid *real injustice*, the circumstances must be *exceptional* and there must be no other remedy. So, it might be asked, how might it be *necessary*, for reasons disclosed in the new health information, to reopen Mr Szentak's appeal to avoid *real* injustice, if his physical or mental condition is not such that it would be unjust or oppressive to extradite him?

56. In any event, I have to apply myself to the CrimPR 50.27 test, as guided by ***Bowen***. I am satisfied that there have been developments in Mr Szentak's health condition, and more especially in our understanding of it, since the appeal was determined. He has complex and interrelated physical and mental health needs. Amelioration of his mental health condition is significantly dependent on addressing his chronic pain issue. Without that, his mental health will probably continue to deteriorate.

57. At the same time, I am satisfied that we now have a much better understanding of how Mr Szentak's complex health needs can and will be met consistently with his extradition. He will be given a full medical assessment, physically and by reference to his complete medical records, and will be given treatment and support appropriate to his needs. He will be fully supported within the Polish justice system as an individual with known suicidal history and tendencies. These are the specific assurances that have been provided by the Polish authorities, and the Court has been given no reason to do otherwise than accept and rely on them.

58. Mr Szentak's predicament, while rightly troubling, does not in all the circumstances we now know about appear to be truly *exceptional*. ***Turner*** itself is eloquent testimony to the fact that people who are physically and mentally unwell, even suicidally so, can be and are extradited to face justice unless identifiable and unusual circumstances appear and the stringent legal tests are met. That is what our international law obligations require. At the same time, that is of course only on the basis that each individual is properly cared for in the process, and in the receiving state whether or not in exactly the same way as they would be here. And that is the basis on which I have concluded I must proceed, on the new evidence, in Mr Szentak's case.

59. I must of course bear in mind the potential impact of the extradition process itself on Mr Szentak's mental health and wellbeing. That is much better understood now than it was in April 2022. It was not put to me that, armed with that knowledge, the clear risks to Mr Szentak's mental health (and indeed his safety) cannot and will not be carefully and effectively managed by co-operative measures between the UK and Poland in effecting his extradition consistently with his Art.8 protected rights. I have been given no reason to doubt that they can and will. In all these circumstances, I have no basis for finding an inevitable, or a probable, incompatibility between Mr Szentak's Art.8 rights and his extradition.

60. Because it is troubling, I have given Mr Szentak's case particularly careful and anxious attention. In all the circumstances and for the reasons I have discussed here, I am unable to conclude that it is *necessary* for his appeal to be reopened in order to avoid *real injustice*. Had I had any hesitation over that on the basis of what we now know about Mr Szentak's health and wellbeing and how extradition will be effected consistently with meeting his complex needs, I would have been reassured by the Polish authorities' *specific* assurances that (a) if, following his medical examination on arrival, his health condition is assessed to be such that it cannot properly be accommodated in a prison environment, his imprisonment may be postponed or suspended until his physical and mental condition is better, and (b) Mr Szentak's sentence length entitles him to apply to serve it outside prison conditions under electronic monitoring in any event.

61. I see no case for further adjourning these proceedings 'pending medical outcomes'. The absence of any indication of a possible timetable for the lumbar surgery in the UK means there is no possibility of doing so other than on an entirely open-ended basis.

That is not in the interests of justice, for all the reasons set out in the authorities cited above. These extradition proceedings have already been considerably extended in the interests of ensuring intense judicial scrutiny of the medical facts of Mr Szentak's case. That process is now at an end.

62. I conclude by reiterating that Mr Szentak is evidently a vulnerable individual with complex healthcare needs. That of course needs to be borne fully in mind as this decision is conveyed to him and as the extradition process is put into final effect. I am of course willing to hear from Counsel if they think any further assistance from the Court would be desirable in supporting that process.

Decision

63. The application to reopen Mr Szentak's appeal is refused.

Addendum

64. Since circulating a draft of this judgment in the usual way for suggested corrections (a process which, as a result of administrative error, has itself been somewhat over-extended) Mr Henley has further updated the Court by submissions of 21st June 2023.

65. He sets out that Mr Szentak has a 'follow up' appointment with Mr Rath's team on 28th June 2023 and an outpatient 'pre-operative clinic' appointment on 19th July 2023. He submits that suggests some degree of imminence for Mr Szentak's surgery. He requests adjournment of the case until 24th July 2023 to enable the Court to be informed, before handing down judgment, as to whether a definitive surgery date has been set.

66. This (informal) application is resisted by Mr Swain. He says the suggested imminence of surgery is speculative. There is still no indication whatever of any likely timeframe. These proceedings have already been significantly extended and reasonable finality is now a priority. In any event, he says, even if a scheduled date emerges in a month or two, it does not, in view of my decision and the reasons set out for it, materially alter the outcome.

67. All I have are the two standard-form appointment notes which, as is the way of such items, convey the bare facts of the appointments and do not address the patient's individual circumstances. I have no evidence or information about either appointment to help me understand even their potential significance. An appointment at a 'pre-operative' (as opposed to 'post-operative') clinic confirms Mr Szentak's status as a waiting-list patient, but beyond that I am left to guess. I cannot proceed by guesswork. I am unable to conclude that this latest information materially affects my decision or requires reconsideration of whether his case is exceptional.

68. I had already decided that the point had been reached at which further delay on an open-ended 'wait and see' basis could not fairly be justified. These latest appointment letters do not, by themselves, introduce any new timetable. If matters do progress quickly, and an operation in the UK does become an imminent prospect in a short timeframe, it must be a matter for the UK and Polish authorities to consider and take a view as to whether it may be in everyone's interests to accommodate it, or not. The limits of the UK courts' supervision of this process have been reached.