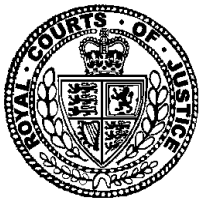

Neutral Citation Number: [2019] EWHC 934 (Admin)

Case No: CO/2520/2018 AND CO/4125/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2019

Before:

LORD JUSTICE IRWIN
MRS JUSTICE SIMLER
SIR KENNETH PARKER
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between:

SILVESTER FERENC SZALAI	**1st Appellant**
- and -	
THE TRIBUNAL OF VESZPRE, HUNGARY	**1st Respondent**
And	
OLEKSANDR ZABOLOTNYI aka ZOLTAN DANI	**2nd Appellant**
-and-	
THE MATESZALKA DISTRICT COURT, HUNGARY	**2nd Respondent**

- -
- -

Jonathan Hall QC and Florence Iveson (instructed by **McMillan Williams Solicitors Ltd**) for the **1st Appellant**
James Hines QC and Amanda Bostock (instructed by **The Crown Prosecution Service**) for the **1st Respondent**

Jonathan Hall QC and Benjamin Seifert (instructed by **Sonn Macmillan Walker**) for the **2nd Appellant**
James Hines QC and Amanda Bostock (instructed by **The Crown Prosecution Service**) for the **2nd Respondent**

Hearing date: 21 March 2019

- -

Approved Judgment

Introduction

1. The principal issue in this case concerns conditions in Hungarian prisons, and the approach to be taken in assessing and relying on assurances as to prison conditions, given by the Hungarian authorities. These Appellants seek to admit and to rely on evidence which they say demonstrates a failure by the Hungarian executive to adhere to assurances given in the past. These earlier cases fall into two categories: cases of assurances in earlier extraditions from the United Kingdom, and cases from other Member States, in this instance extradition from Germany. The point is of interest since the approach to such a problem must be taken to be consistent in respect of any Member State, participating in the system of European Arrest Warrants, under Part 1 of the Extradition Act 2003 ["the 2003 Act"].

2. The Appellants seek leave to admit and rely on fresh evidence, including expert evidence, which they say demonstrates breaches of earlier assurances. The application to admit the evidence is before us. We agreed to consider the material *de bene esse* and to rule on the application at the same time as giving our substantive judgment.

3. As part of their response to requests for information, the Hungarian Ministry of Justice, Department of International Criminal Law have informed the court that Hungarian domestic law prevents disclosure to an English court of details of criminal proceedings, including extradition process, where the extradition is sought elsewhere than from the United Kingdom. This information is classified as "highly sensitive data". We address the effect of these provisions in the context of Article 15(2) of the Framework Decision of 13 June 2002 ["the Framework Decision"].

4. This is the judgment of the Court, to which we have all contributed.

The Background: Hungarian Prison Conditions and Assurances

5. It is a trite proposition that the operation of the European Arrest Warrant system under the Framework Decision and Part 1 of the 2003 Act depends on mutual trust and respect between the Member States, giving rise to a strong presumption that each Member State will effectively protect the rights of an extraditee under the European Convention on Human Rights ["ECHR"] and the Charter of Fundamental Rights adopted by the European Union. Since the decision of the Court of Justice of the European Union ["CJEU"] in *Aranyosi and Căldăraru* C-404/15 and C-659/15 PPU, a Court addressing a request for extradition, where a potential breach of a Convention Right is in question, where further information bearing on that breach has been requested and received, and where the court cannot discount or exclude that risk, "must decide whether the surrender procedure should be brought to a close": see paragraph 104 of *Aranyosi.*

6. Where the evidence, including any further information provided (or withheld), leads a Court to conclude that a relevant risk may otherwise exist, then specific assurances can be sought and may properly be relied on to discount or exclude the risk. It will be obvious that such assurances are only necessary where the presumption that a Member State will provide effective protection of Convention rights cannot alone be relied upon.

7. The approach to reliance upon assurances was established in *Othman v United Kingdom* (2012) 55 EHRR 1. Whilst that case concerned Jordan rather than a Member State of the EU, the principles can be read across. The principles are set down in paragraph 189 of the decision:

> "189. More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving state's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:
>
> (1) whether the terms of the assurances have been disclosed to the Court;
>
> (2) whether the assurances are specific or are general and vague;
>
> (3) who has given the assurances and whether that person can bind the receiving state;
>
> (4) if the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them;
>
> (5) whether the assurances concerns treatment which is legal or illegal in the receiving state;
>
> (6) whether they have been given by a Contracting State;
>
> (7) the length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances;
>
> (8) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers;
>
> (9) whether there is an effective system of protection against torture in the receiving state, including whether it is willing to co-operate with international monitoring mechanisms (including international human-rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible;
>
> (10) whether the applicant has previously been ill-treated in the receiving state; and
>
> (11) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State."

8. In this case we are of course not concerned with torture, but we are concerned with inhuman and degrading treatment and potential breaches of that limb of Article 3 of the Convention.

9. The question of prison conditions in Hungary has been of concern for some years. Since the decision of the European Court of Human Rights ["ECtHR"] in *Muršić v Croatia* (2017) 65 EHHR 1, the matter has been given sharper focus by the ruling that an Article 3 breach can and will be established if, subject to some qualifications, a prisoner will be accorded personal space in his or her cell amounting to less than 3m². The relevant passage in the headnote reads:

> "**3. Principles regarding prison overcrowding (art.3)**
>
> H7. (a) It was not possible to specify a specific number of square metres that should be allocated to a detainee in order to comply with art.3 , because other relevant factors relating to the overall conditions of detention played an important part. However, the minimum standard was 3m² of floor space per detainee in multi-occupancy accommodation. If the detainee's personal space fell below this standard, there was a weighty but not irrebuttable presumption of a violation of art.3 . The cumulative effects of detention may rebut the presumption that art.3 had been violated. The burden was on the Government to demonstrate convincingly that there were factors which adequately compensated for the lack of personal space. Whether the presumption had been rebutted should be informed by the cumulative effect of those conditions. [103]–[110], [122]–[126]
>
> H8. (b) The strong presumption of a violation of art.3 could normally be rebutted only if the following factors were cumulatively met: (1) the reductions in the required minimum personal space of 3m² were short, occasional and minor; (2) such reductions were accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and (3) the applicant was confined in an appropriate detention facility and there were no other aggravating aspects of the conditions of his detention. [137]
>
> H9. (c) In cases where a detainee in multi-occupancy accommodation was allocated personal space of between 3 and 4m², the space factor remained a weighty factor in the assessment of the adequacy of conditions of detention. Article 3 would be found to have been violated if the restriction of personal space was coupled with 3 other aspects of inappropriate physical conditions of detention including, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, access to private commodes, and compliance with basic sanitary and hygienic requirements. [139]
>
> H10. (d) There was a strong presumption in this case of a violation of art.3 in the periods when the applicant was in a cell with less than 3m² of personal space. The period of 27 days in such a cell could not be regarded as short, occasional and minor reductions in the required personal space. The strong

> presumption of a violation of art.3 had not been rebutted. [146]–[153]
>
> H11. (e) For other periods, of between one and eight days in a cell with less than 3m² of personal space, and in a cell with between 3 and 4m² of personal space, other relevant factors might rebut the presumption of a violation of art.3. In the ordinary daily regime, the applicant was allowed two hours per day of outdoor exercise, three hours per day of free movement outside his cell, and time for meals outside his cell. Entertainment facilities were also available to the applicant. This significantly alleviated the problems of the applicant's lack of personal space. The applicant's complaints about the general conditions of his detention were inconsistent and contrary to the available evidence, and there was no reason to call into question the findings of the domestic authorities that the applicant was otherwise detained in generally appropriate conditions. The presumption of a violation of art.3 had been rebutted with respect to the shorter periods of time. [146]–[150], [154]–[177]"

10. These Appellants make their case squarely on the provision of the personal space in Hungarian prisons, and on the proposition that assurances of adequate personal space are not reliable. We have not been concerned with other aspects of conditions in Hungarian prisons. When and to what extent is evidence of alleged breaches of past assurances in other cases to be received and relied upon, in applying the *Othman* principles to assurances proffered?

11. The ebb and flow of concern as to prison conditions in Hungary is very well set out in the judgment of Singh LJ in *Fuzesi and Others v Hungary* [2018] EWHC 1885 (Admin) at paragraphs 16 to 29. We do not intend to recapitulate that history in detail. It is sufficient to summarise as follows.

12. In March 2015, the ECtHR gave judgment in a "pilot" case against Hungary, *Varga v Hungary* (2015) 61 EHRR 30. In the course of that case, Hungary conceded that there was an Article 3 risk in their prisons because of overcrowding. Following on that acknowledgement, on 1 June 2015 Hungary gave a general assurance in relation to a group of people sought, in these terms:

> "The Ministry of Justice of Hungary-acting as Central Authority-presents its compliments to the National Crime Agency and in connection with the surrender proceedings being conducted in the United Kingdom on the basis of the Hungarian European arrest warrants, has the honour to provide you with the following guarantee: The Ministry of Justice of Hungary and the National Headquarters of the Hungarian Prison Service, which has jurisdiction in Hungary to provide this binding assurance, guarantees that the following persons will, if surrendered from England and Wales pursuant to the respective Hungarian European arrest warrants, during any period of detention for the offences specified in the European arrest warrants, be detained in conditions that guarantee at least three square metres of

> personal space. The persons listed below will at all times be accommodated in a cell in which they will personally be *6 provided with the guaranteed personal space.
>
> …
>
> As of 1 January 2015, Hungary has signed, ratified and implemented the Optional Protocol to the UN Convention Against Torture (OPCAT) and has set up the General Ombudsman as its National Preventative Mechanism. Accordingly, the General Ombudsmen will monitor compliance with this assurance."

13. That assurance was considered to be sufficient by the Divisional Court in *GS and Others v Hungary* [2016] EWHC 64 (Admin). In the course of his judgment, Burnett LJ (as he then was) emphasised the importance of such assurances:

> "35. The assurance is a solemn diplomatic undertaking by which the Hungarian authorities consider themselves bound. We have no evidence about whether Hungarian law would enable a beneficiary of the assurance to enforce it in legal proceedings, as a person with the benefit of a similar assurance given by the British Government might seek to do in public law proceedings relying on a substantive legitimate expectation. But to my mind the absence of such a remedy does not call into question the reliability of the assurance. It is binding as between the two countries concerned.
>
> 36. In my judgment there is no basis for concluding that the assurance given by the Hungarian authorities relating to the treatment of these appellants (and all those on the list or who might be added to it) will not be honoured. The presumption that it will be has not been displaced. The recent evidence suggest that it has in fact been honoured It follows that the grounds for believing that there is a real risk of treatment contrary to article 3 of the Convention arising from the pilot judgment in Varga in the absence of the assurance, have effectively been met by the assurance. I would dismiss this ground of appeal in each of the cases before us."

14. It is worth emphasising that these assurances came from the "Ministry of Justice of Hungary – acting as Central Authority" or, as Burnett LJ emphasised in the passage quoted above, from "the Hungarian authorities", and was binding as between the two countries. In other words, the assurances came from the executive branch of the State, indeed a department of the executive with particular responsibility for justice and for the prison establishment.

15. The Hungarian government has set about a programme of prison building and refurbishment, as well as instituting other measures designed to reduce the prison population. There are in Hungary two more modern prisons which do conform with

the space requirements laid down in *Muršić*, as well as providing better conditions generally, those being the prisons at Szombathely and Tiszalök.

16. Following on from the programme of improvements, Hungary stated in May 2017 that specific or individual assurances were no longer needed in respect of extradition.

17. However, in April 2018, the Hungarian Ministry of Justice acknowledged, in respect of one of the Applicants in *Varga*, that he had been detained in a cell with eight people with net space for each prisoner of 2.8m². This concession led to the Hungarian authorities giving renewed specific assurances, affecting the individual considered in *Fuzesi and another*, in the following terms:

> "The Ministry of Justice of Hungary and the National Headquarters of the Hungarian Prison Service, which has jurisdiction in Hungary to provide this binding assurance, guarantees that [the first appellant] will […] during any period of detention for the offences specified in the European arrest warrant, be detained in conditions that guarantee at least 3 square metres of personal space. [The first appellant] will at all times be accommodated in a cell in which he will personally be provided with a guaranteed personal space.
>
> As of 1 January 2015, Hungary has signed, ratified and implemented the Optional Protocol to the UN Convention against Torture (OPCAT) and has set up The General Ombudsman as its National Preventative Mechanism. Accordingly, the General Ombudsman will monitor compliance with this assurance."

18. In other words, the Hungarian authorities moved from a position that no individual assurance was necessary, to once again give specific individual assurances. The Court in *Fuzesi* found that assurance reliable. They concluded (paragraph 37):

> "37. …What is crucial, in our view, is that there is no evidence that any assurance to the UK in respect of an individual has been breached: see section VI of the letter dated 6 May 2018 which we have already cited from the Hungarian Ministry. That evidence is unequivocal and specific. The evidence cited by Mr Summers on the other side of the balance, namely paragraphs 161 to 165 of the HHC report, is both indirect and anonymous. Mr Summers fairly accepts that it is of limited value. It does not appear, at least not clearly, in our view, to relate to any individual extradited from the UK, although it should be observed, as we have already said, that paragraph 161 does refer to a person "of British nationality".
>
> 38. In our view, the failure to identify a specific prison as has been done in other cases, for example that of the second appellant, does not make a material difference. We do not find anything of material assistance in the opinion of the Advocate General in the reference from the Bremen court in *ML*. The issue

> which is before this court (as to whether an assurance from Hungary must specify the particular prison where a requested person will be detained) did not arise in that case. As Mr Summers appeared to acknowledge at the hearing before us, the opinion of the Advocate General is "neutral" on the issue that divides the parties in the present case."

19. The reference to the passage quoted above to the case of *ML* was to the opinion of the Advocate General to the CJEU in the preparatory phase of the case, now reported as *ML v Hungary* C-220/18 PPU of 25 July 2018. That case flowed from a referral to the CJEU by the Higher Regional Court, Bremen, Germany. As the Advocate General expressed it:

> "68. That point is relevant because the referring court is uncertain whether, in order to form a view on ML's conditions of detention in Hungary, it may take into consideration information which it is not possible to verify if it comes from the issuing judicial authority itself or has been requested by that authority. (48)
>
> 69. According to the order for reference, that information was provided by the Hungarian Justice Ministry but the order does not state whether it was provided directly or through the issuing court. In the latter case, logically, the information would be relevant for the purposes of executing the EAW, provided that its legal value is derived from the fact that it has been accepted and endorsed by the issuing court.
>
> 70. The issuing and executing judicial authorities are the only *active protagonists* in the processing of the EAW. The executing court therefore has to send its requests for information to the issuing court, which has an obligation to respond to those requests. (49) The fact that the judicial authorities are the protagonists is without prejudice to the purely auxiliary role which, as necessary, may be played by the central authorities designated by the Member States under Article 7 of the Framework Decision. (50)
>
> 71. Accordingly, the executing judicial authority must take into account the information which has been provided to it by the issuing judicial authority or which, having come from the central authority (or one of the central authorities) of the issuing Member State, has been accepted and transmitted by the issuing judicial authority.
>
> 72. The foregoing must be interpreted without prejudice to the fact that the executing judicial authority may also rely on such information as it is able to obtain for the purpose of determining that there is 'information that is objective, reliable, specific and properly updated' (51) which is capable of demonstrating that there is a real risk of inhuman or degrading treatment.

> 73. That other information may be obtained by the executing authority in the course of the domestic procedure for dealing with the EAW, on the initiative of the person sought or the Public Prosecutor's Office which, in Germany, acts as the executing judicial authority. (52) Just as the information obtained by these methods must, in its entirety, undergo a careful assessment by the person who has requested it, (53) scrutiny of the information provided by the issuing court — whether directly or with the endorsement of its own authority — can extend only to confirmation of the origin of that information, given that, as regards the substance of that information, the trust on which mutual recognition is founded must, in principle, take precedence."

20. When *ML* came before the full Court, they considered the approach to information, and the source of such information, when an executing judicial authority is considering an Article 3 risk:

> "60. To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated concerning the detention conditions within the prisons of the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the European Court of Human Rights, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89).
>
> …
>
> 62. Thus, in order to ensure observance of Article 4 of the Charter in the particular circumstances of a person who is the subject of a European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is then bound to determine, specifically and precisely, whether, in the particular circumstances of the case, there are substantial grounds for believing that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4, because of the conditions for his detention envisaged in the issuing Member State (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 92 and 94).

> 63. To that end, that authority must, pursuant to Article 15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State. That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring detention conditions, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 95 and 96).
>
> 64. The issuing judicial authority is obliged to provide that information to the executing judicial authority (judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 97)."

21. The Court also went on to consider the impact of the contemplated length of detention:

> "97. It is true that the case-law of the European Court of Human Rights indicates that the length of a detention period may, as has already been stated in paragraphs 91 and 93 of this judgment, be a relevant factor in assessing the gravity of suffering or humiliation caused to a detainee by the inadequate conditions of his detention (ECtHR, 20 October 2017, *Muršić v. Croatia,* CE:ECHR:2016:1020JUD000733413, § 131).
>
> 98. However, the relative brevity of a detention period does not automatically mean that the treatment at issue falls outside the scope of Article 3 of the ECHR when other factors are sufficient to mean that it is caught by that provision.
>
> 99. The European Court of Human Rights has also held, that, when the detainee has space below 3 m², a period of detention of a few days may be treated as a short period. However, a period of around 20 days such as that envisaged in the case in the main proceedings by the authorities of the issuing Member State, which, moreover, may quite possibly be extended in the event of (undefined) 'circumstances preventing [that period coming to an end]', cannot be regarded as a short period (see, to that effect, ECtHR, 20 October 2017, *Muršić v. Croatia,* CE:ECHR:2016:1020JUD000733413, §§ 146, 152 and 154).
>
> 100. Accordingly, the fact that detention in such conditions is temporary or transitional does not, on its own, rule out all real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter.

> 101. In those circumstances, if the executing judicial authority considers that the information available to it is insufficient to allow it to adopt a surrender decision, it may, as has already been stated in paragraph 63 of this judgment, request, in accordance with Article 15(2) of the Framework Decision, that the issuing judicial authority provide it with the supplementary information it deems necessary in order to obtain further details on the actual and precise conditions of detention of the person concerned in the prison in question."

The Appellant Zabolotnyi

22. Zabolotnyi's extradition is sought pursuant to an EAW issued by a judge of the Mateszalka District Court on 28 June 2017, and certified by the National Crime Agency ["NCA"] on 20 April 2017. The EAW is an accusation warrant, claiming that the Appellant Zabolotnyi obtained a false Hungarian passport in 2015. Zabolotnyi was arrested on 15 June 2017 and on 5 September 2017, District Judge Snow ordered his extradition, following a hearing at the Westminster Magistrates' Court. DJ Snow held that a prison assurance was not required in the case, on the basis that the presumption of compliance was, at that stage, restored.

23. On 27 April 2018, Zabolotnyi was granted permission to appeal by Ouseley J, who directed that the case should await the decision in *Fuzesi.*

24. On 20 July 2018, Zabolotnyi was given a personal assurance, issued by the Hungarian Department of Justice in the following terms:

> "The Ministry of Justice of Hungary and the National Headquarters of the Hungarian Prison Service, which has jurisdiction in Hungary to provide this binding assurance, guarantees that **the person known to the Hungarian authorities as Zoltan DANI, his real name ZABOLOTNY OLEKSANDRY (born known as in Uzhhorod, known as on the 12th July 1987, known as Ukranian – Hungarian national**) will, if surrendered from Scotland, Northern Ireland, England and Wales pursuant to the Hungarian European arrest warrant **No. 11.Bny.265/2016/2**. Issued by the **Court of Mátészalka**, during any period of detention for the offences specified in the European arrest warrant, be detained in conditions that guarantee at least 3 square metres of personal space.
>
> **The person known to the Hungarian authorities as Zoltan DANI, his real name ZABOLOTNY OLEKSANDRY** will at all times be accommodated in a cell in which he will personally be provided with the guaranteed personal space.
>
> It is guaranteed that **the person known to the Hungarian authorities as Zoltan DANI, his real name ZABOLOTNY OLEKSANDRY** will be accommodated either in the Penitentiary Institute of Szombathely or in the Penitentiary Institute of Tiszalök, after his surrender to Hungary."

The Appellant Szalai

25. The Appellant Szalai's extradition is sought pursuant to an EAW issued by the Tribunal of Veszpre, Hungary on 15 February 2018 and certified by the NCA on 27 March 2018. The warrant relates to a conviction in relation to two joint enterprise offences of theft. The judgment became final on 30 October 2012 and sentence to be served is one year in prison. Szalai was arrested on 8 May 2018 and remanded in custody, where he has remained throughout. Following earlier provision of information, a specific assurance was given in relation to the Appellant Szalai on 7 June 2018 in the following terms:

> "… the Ministry of Justice of Hungary provides you with the following guarantee in connection with the surrender proceedings being conducted in the United Kingdom on the basis of the European arrest warrant No. Szv.925/2012/9 issued by the Regional Court of Veszprém:
>
> **The Ministry of Justice of Hungary and the National Headquarters of the Hungarian Prison Service**, which has jurisdiction in Hungary to provide this binding assurance, **guarantee** that **Szilveszter Ferenc Szalai** (born 31/12/1972 in Veszprém, Hungary, Hungarian national) will, if surrendered from Scotland, Northern Ireland, England and Wales pursuant to any of the above Hungarian European arrest warrants, during any period of detention for the offences specified in the European arrest warrants, be detained in conditions that guarantee at least 3 square metres of personal space. Szilveszter Ferenc Szalai will at all times be accommodated in a cell in which he will personally be provided with the guaranteed personal space."

26. The extradition hearing in relation to Szalai took place before DJ Snow on 23 June 2018. The Appellant took no point on Article 3 in the course of the hearing, but the Court considered prison conditions pursuant to the section 21 consideration. The Court noted the assurance provided in the terms quoted above and DJ Snow concluded that there was "no real risk of the RP being held in conditions which might violate Article 3 of the ECHR with such an assurance in place".

27. DJ Snow also considered this Appellant's Article 8 rights. In that context it was relevant that this Appellant had been found guilty of an offence of stalking. His appeals against conviction and sentence failed, and he was sentenced to 26 weeks' imprisonment before the Isleworth Crown Court on 8 December 2017. He had mental health difficulties. On 23 March 2018, the Home Secretary took the decision to deport him on the ground that he had "committed a serious criminal offence in the United Kingdom and … there is a real risk that [he] may reoffend in the future". No evidence was adduced before the Court to challenge the presumption that Hungary would provide adequate treatment for this Appellant's medical conditions. DJ Snow found as a fact that:

> "The only evidence of the RP's alleged suicidal tendencies comes from him and is entirely self-serving. He has produced no corroborative evidence. His evidence has not crossed the high threshold. He has failed to demonstrate that there is a real risk

> to his physical or mental condition if he is extradited. He has not rebutted the presumption. I reject this challenge."

The Issue

28. As we have indicated above, the outstanding issue common to these cases is the reliability of the assurances offered by Hungary. The terms of the assurances are not challenged. The basis of the challenge rests in large measure upon the suggestion that fresh evidence demonstrates earlier breaches of assurances by Hungary.

Further Evidence

29. The first fresh evidence sought to be introduced was brought before the Court granting permission to appeal, in the form of a witness statement from a Mr Gabor Bagdi of 1 October 2018. Bagdi was an extraditee removed from England to Hungary and his witness statement gives a description, on his account, of the conditions he met following extradition. His evidence is no longer relied on, since it is conceded, following a detailed letter from the Hungarian Ministry of Justice, that he was at all times held in conditions with sufficient personal space and for that reason his account is not reliable.

30. The Appellants now seek to rely on the evidence of Dr András Kádár. Dr Kádár is a Hungarian attorney. He is the co-chair of the Hungarian Helsinki Committee ["HHC"], a human rights watchdog which maintains a focus on detention conditions in Hungary. Between 1999 and 2009, he himself participated as a monitor in the HHC's prison monitoring programme in Hungary. From 2009 he was excluded from prison monitoring, since the Hungarian authorities altered the rules so as to exclude attorneys who had clients in any of the relevant penitentiary institutions. Dr Kádár had such clients and, indeed, has litigated prison conditions cases, both in Hungary and in Strasbourg. According to the introduction of his first report, Dr Kádár has continued unofficially, and sporadically, to observe prison conditions in Hungary on an *ad hoc* basis.

31. Dr Kádár has submitted two reports, one dated 13 October 2018 with an addendum report of 14 November 2018. Although these reports to some degree deal with other conditions than the amount of personal space accorded, the thrust of the evidence is to suggest that assurances have not been observed in relation to personal space. As we have already indicated, we agreed to consider this evidence *de bene esse* since it is advanced as being potentially highly significant on that point. Dr Kádár refers to extraditees from Germany, as well as the United Kingdom.

32. The Appellant's solicitor, Mr Stevens, has provided a witness statement of 23 November 2018, indicating that the reports from Dr Kádár were commissioned in a different case (*Hungary v Garamvolgyi*), no doubt since a similar point was to be taken in that case Mr Stevens indicates that it was not sensible to seek a separate report on the same issue, and hence Dr Kádár's report is sought to be introduced here. What the statement does not do is to give any explanation as to why Dr Kádár's report was not obtained earlier. However, although the Respondents do object to admission, it appears to us unlikely that this evidence could have been obtained before the extradition hearings in these two cases.

The Expertise and Standing of Dr Kádár

33. In the course of correspondence, the Hungarian authorities have raised the question as to whether evidence should be admitted from Dr Kádár since, according to their procedural law, an attorney active in a given field should not be heard as an expert in their courts. In our view, this is not a material consideration here. Admissibility of such evidence must be decided by English law. We see no objection to the admission of this evidence on that ground.

Citation of Alleged Breaches of Assurances to Other Countries

34. In the cases of extradition from Germany (*Szikszai* and *Kulscar*), on which the Appellants seek to rely, they allege that in both cases Hungary failed in the event to comply with the assurances that had been given, and following their extradition, held the persons concerned in conditions which violated Article 3. The Appellants contend that the evidence in respect of the two German cases is admissible, and that it gives real support to their case that the relevant assurances given by the Hungarian authorities cannot be safely relied upon by this Court.

35. Mr Hall QC, on behalf of the Appellants, submitted that there was no rule of law which, as a matter of principle, precluded this Court from admitting the evidence, and, if admitted, from giving it such weight as the Court thought fit. Mr Hall referred to *Patel v Government of India & SSHD* [2013] EWHC 819 (Admin), with a view to demonstrating that no special considerations arose by reason only of the fact that an alleged breach was of an assurance given, not to the UK authorities or to a UK court, but to a foreign authority or court.

36. Mr Hines QC, on behalf of the Respondents, conceded that there could be circumstances where, exceptionally, proven or admitted breaches of assurances given to other states would or might be relevant. However, he submitted that the UK court was not the appropriate forum to make factual or evidential findings in relation to whether such alleged breaches have taken place.

37. In our view, Mr Hines was right to make his limited concession. If a serious issue has been raised as to whether another State will in fact treat a person extradited from the UK in accordance with Article 3, this Court is not precluded by any rule of law from having regard to any material evidence bearing on that issue. The CJEU in *ML* at paragraph 60 (set out above) does not in terms provide an exhaustive statement of the forms of proof that may properly be relied on if a serious issue of that nature has been raised.

38. However, we believe that this Court should exercise very considerable caution when asked by an appellant to admit and to evaluate evidence relating, not to an alleged breach of an assurance given to the UK authorities or courts, but to foreign authorities or courts, for the following reasons.

39. Firstly, in *ML* the CJEU emphasised that the task of the executing judicial authority was to assess "solely the actual and precise conditions of detention of the person concerned". The focus therefore must be on the question whether the issuing state can be relied upon to comply with an assurance given to the UK, and on that question alleged breaches of past assurances given to the UK are of obvious and central

relevance. That indeed has been the general approach of this Court. For example, Singh LJ stated in *Fuzesi* (paragraph 37): "What is crucial, in our view, is that there is no evidence that any assurance to the UK in respect of an individual has been breached".

40. Secondly, there are likely to be real practical difficulties when and if this Court were to embark on an exercise of evaluating evidence in respect of alleged breaches of assurances given to foreign authorities or courts. This Court may well not have before it all relevant information, including the specific terms of any relevant assurances, the exact nature and full scale of any alleged breaches, the full context in which any breach may have occurred, the position of the foreign state, and detail of any remedial action on the part of the foreign state. Furthermore, there might have been legal proceedings, or might be pending legal proceedings, in the state to which the assurances in question were given, and proper account would need to be taken of any such proceedings. It might also be the case that similar assurances were given to one or more other states, opening up the potential for very extensive investigation which this Court would be reluctant, and ill-equipped, to carry out.

41. Although this Court has power, under Article 15 (2) of the Framework Decision, to request relevant information from foreign authorities, and those authorities are obliged to respond (*Aranyosi*, at paragraph 97), the practical difficulties would not necessarily disappear, and the extradition proceedings would thereby inevitably be prolonged.

42. The practical difficulties are illustrated to some extent by the present appeals. By letter dated 7 November 2018 the Ministry of Justice replied to the letter dated 25 October 2018 from the CPS, stating in effect that Hungarian domestic law prohibited the Ministry of Justice from providing relevant information to the UK regarding German cases. This response was challenged by the Appellants, and resulted in DLA Piper, on joint instruction of the Appellants, giving an expert legal opinion on Hungarian data protection law. DLA Piper advised that there could well be a sound legal basis for the Ministry to provide personal information to the UK on any person extradited from the UK, but there was no such basis for providing such information to the UK on any person extradited from another State (such as Germany). As matters stand therefore, there is before the Court no substantive response from Hungary in respect of the two German cases relied upon by the Appellants.

43. As to *Patel*, the material circumstances were well known and uncontroversial. It was manifest that Portugal and India took a different view of what specialty required, and the position of India vis-a- vis an extradition from Portugal gave no support at all for the contention that India would not comply with an assurance to the UK in respect of specialty. *Patel* was a case on its own special facts, and cannot be relied upon for the wide proposition advanced by Mr Hall. In the present context it is perhaps not without interest that the clear decision in *Patel* was insufficient to deter a subsequent appellant from repeating the same argument, with leading counsel putting before the court what purported to be further and better information about the Portuguese extradition. The Divisional Court (President of the QBD, Blake J) did consider the material but firmly rejected the argument, highlighting the scope for fruitless forensic ingenuity once extradition proceedings in a foreign jurisdiction have been brought into play: *Shankaran v Government of India & SSHD* [2014] EWHC 957 (Admin).

44. Having regard to these considerations, we conclude that a Court would have to satisfy itself that the evidence relating to assurances given in extradition elsewhere is

manifestly credible, is directly relevant to the issue to be decided and of real importance for the purpose of that decision, before the Court should be invited to admit and consider such evidence.

Article 3: Substantive Points

45. Against that background we turn to consider the merits of the Article 3 argument advanced by these Appellants. It depends entirely on the fresh evidence they seek permission to adduce and rely on.

46. In the UK cases, the Hungarian authorities provide assurances individually for each requested person. Some assurances simply guarantee 3m² of personal space; others also guarantee detention at one of the two privately run prisons in Hungary, namely Szombathely and Tiszalök National Prisons. Both of these prisons are internationally recognised as having never suffered from overcrowding as a result of the contracts which their private owners have with the Hungarian government. This is accepted by Dr Kádár, and by his colleagues from the Hungarian Helsinki committee who have provided reports in other Hungarian cases (including *Fuzesi*).

47. The Appellants contend the evidence establishes breaches of assurances issued by the Hungarian authorities. Furthermore, they say the evidence of breach is significant in the context of an overall assessment of the reliability of the present assurances issued to the Appellants themselves: it demonstrates that the present assurances do not effectively meet the risks to these Appellants. There remains a real risk that their surrender will lead to a violation of their Article 3 rights. The result is, they submit, that something has gone wrong with the system of Hungarian assurances and either the appeal should be allowed or at the very least there is a need for further and better assurances.

48. We consider first the evidence concerning three individuals extradited by the UK to Hungary: Ahmed Salikh, Joszef Szabo, and Tamas Kiss. In response to evidence about these individuals, two letters dated 8 November and 3 December 2018 from the Ministry of Justice of Hungary have been served. The Appellants have proceeded on the assumption that the facts contained in the letters (with one exception, relating to Mr Kiss, which appears to be an error on the face of the document) are correct. On that basis the Appellants contend that the response overall supports the admission of the evidence relating to Szabo, Salikh and Kiss; and there is no need for cross-examination.

Jozsef Szabo

49. Mr Szabo was extradited from the UK on 23 March 2016. Although it was initially suggested by the Hungarian Ministry of Justice that it was not aware of any guarantee provided in his case, the letter of 3 December 2018 refers to a "provided guarantee" and it is now accepted that an assurance was provided to the UK that he would have at least 3m² of personal space at all times during any detention.

50. Two breaches of this assurance are relied on by the Appellants. First, it is said that between 23 March and mid-April 2016 he was detained for one to two weeks in Unit III of the Metropolitan Penitentiary Institution, in a cell that was 13.5m² and shared by five individuals, leaving 2.7m² of space per person. Secondly, from 3 to 8 May 2016 it is said he was detained for six days in a cell measuring 19.7m² and shared with at least

seven others, leaving 2.81m² of space per person. There is no dispute that Mr Szabo has been held under CPT compliant conditions at all times since 17 May 2016, first in Szombathely National Prison and then in Tiszalök National Prison.

51. There is no challenge to these breaches. The Ministry of Justice admits that between 24 March 2016 and 17 May 2016 (at which point he was transferred to Szombathely National Prison) there were "short periods - lasted for a few days – when [he] did not have 3m² personal space in his cell". Since no detail is given as to the number of periods, or the number of days, in which these breaches occurred, or the amount of personal space provided, we proceed on the basis of two periods of breach: the first lasting up to two weeks, and the second six days as the Appellants allege.

52. The response from the Ministry of Justice states in relation to the alleged breaches as follows:

> "We would like to note that CPT and the ECHR differentiate short-term detention (up to a few days) to longer detention when examining inhuman and grading treatment. According to the CPT minimum standards sheet… "CPT has never considered that its cell size standards should be regarded as absolute. In other words, it does not automatically hold the view that a minor deviation from its minimum standards may in itself be considered as amounting to inhuman and degrading treatment of the prisoner(s) concerned". "Conditions of detention could be considered as amounting to inhuman and degrading treatment, the cells either have to be extremely overcrowded or, as in most cases, combine a number of negative elements"…. Considering the aforementioned reasons, altogether we consider the provided guarantee complied…."

53. Mr Hall submits this is a remarkable attempt to excuse non-compliance with the assurance given to the UK, by making an argument about what amounts to inhuman and degrading treatment, leading to the *non sequitur* conclusion "…altogether we consider the provided guarantee complied with". Furthermore the argument overlooks the explanation in *Muršić* that a violation of Article 3 in these circumstances would not be rebutted merely by explaining that there were only short term reductions in the required minimum space.

54. We have noted above that the ECtHR in *Muršić* made clear that where the personal space available to a detainee falls below 3m² of floor surface in multi-occupancy accommodation in prisons, the strong presumption of a violation of Article 3 will normally be capable of being rebutted if three factors are cumulatively met (see paragraphs 137 and 138). These are, first, the reductions in the required minimum personal space of 3m² are short, occasional and minor. Secondly, such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out of cell activities. Thirdly, the applicant is confined in what is, when viewed generally, an appropriate detention facility and there are no other aggravating aspects of the conditions of his or her detention. In light of the response from the Ministry of Justice, it does seem to us that the evidenced breaches can properly be viewed as short and occasional in context, occurring as they did, in the early period of the detention, and remedied reasonably promptly.

Tamas Kiss

55. Mr Kiss was extradited from the UK on 24 May 2016, subject to an assurance that he would be provided with 3m² of personal space. The Appellants initially relied on a single breach of that assurance; namely when in Tököl National Prison, it is alleged that he was detained for five months in a 20 m² cell with between 12 and 16 inmates, allowing only 1.66 to 1.25m² per person of personal space.

56. The response from the Ministry of Justice disputes this allegation. They detail the size of the prison cell in which he was detained from 13 June 2016 to 19 September 2016 as ranging from 30-33m², and the number of inmates as ranging from 7-10 people. They deny that he was ever detained with 12 to 16 people. Accordingly, they say that Mr Kiss, who was initially placed in Tököl National Prison on 13 June 2016, was detained in accordance with the provided prison assurance at all times.

57. They go on to state that, in order to be able to comply with the prison guarantee in the long term, Mr Kiss was to be transferred to Szombathely National Prison where the general detention conditions are CPT compliant. However, before the scheduled transfer, he requested cancellation of the transfer and stated in writing he would not make complaints in connection with detention conditions. He was not transferred accordingly. He nonetheless made a complaint about the detention conditions on 9 September 2016 through his legal representative. His detention conditions were examined and the complaints were dismissed on 17 October 2016 on the basis (as set out above) that he had been held in accordance with the provided prison guarantee (having personal space of at least 3m²) at all times.

58. The Appellants take issue with the statement that Mr Kiss was at all times provided with at least 3m² of personal space. They contend that there are two periods, 1 July 2016 to 31 July 2016 and the period 17 August 2016 to 19 September 2016 in which it is said that Mr Kiss was held in a cell of 30m² with 10 inmates, with no deduction made for sanitary facilities. Mr Hall maintains there was a breach of the assurance because sanitation (toilet facilities) must be excluded from the calculation of space: see *Muršić*.

59. We do not accept this submission. The judgment in *Muršić* was promulgated on 20 October 2016 and post-dates the detention in Mr Kiss' case. As Dr Kádár states in his report dated 13 October 2018, the basis for calculating minimum personal space changed with effect from 1 January 2017, so that thereafter the area occupied by the toilet and sanitary unit was not to be included in the calculation (see paragraphs 10 and 11). There is every reason to believe that the Hungarian Ministry of Justice changed the calculation methodology from then onwards as required by *Muršić*. It seems to us (in agreement with Mr Hines) that it would be unreasonable to apply this changed methodology retrospectively in order to demonstrate breach of an assurance, when it would not have been considered a breach at the relevant time.

60. The response from the Ministry of Justice also states:

> "Since Tamas Kiss's transfer to the Szombathely National Prison – where more comfortable placement would have been possible – was cancelled on the basis of his explicit request after he was informed on its consequences, it does not seem fair attitude that Tamas Kiss made complaints on his detention conditions both

> before the Hungarian and British authorities, since his less comfortable placement was the result of his own request.…".

We consider this to reflect a significantly misguided approach, albeit not a deliberate intention to breach the assurance given. While the grant of Mr Kiss's request did not, in his case, amount to an overriding of the assurance given to the UK, we emphasise that solemn undertakings given to the UK by way of assurances cannot be interpreted as permitting exceptions to be made in cases where a prisoner makes a request of this sort. The assurance is a binding undertaking given to the United Kingdom, not a bargain with the prisoner. The request to cancel the scheduled transfer should either have been refused by the Hungarian authorities, or if accommodated, the obligation to comply with the assurance given to the UK subsisted. We do not consider it appropriate for a prisoner to be asked to waive his rights to make complaints in these circumstances.

Mohammed Ahmed Salikh

61. Mr Salikh was extradited from the UK in March 2018, subject to an assurance that he would be provided with at least 3m² of personal space. The only breach alleged relates to the period from 12 March to 20 March 2018 when he was detained for eight days in a cell that was 27.8m² shared between 10 inmates, leaving 2.78m² of space per person.

62. The response from the Ministry of Justice implicitly accepts this breach. We view it as relatively short-lived in the period of his initial arrival in Hungary and remedied reasonably promptly.

63. The response also states that his situation is similar to that of Mr Kiss. He was initially placed in Szeged Prison where "… CPT compliant detention conditions cannot be guaranteed at all times". They say he, too, was to be transferred to Szombathely National Prison but the transfer was cancelled at his request and he was informed that CPT compliant detention conditions could not be guaranteed in Szeged Prison, but he chose to remain there and renounced the prison guarantee in writing stating he would not make complaints in connection with detention conditions. The Ministry of Justice repeats the point that they deem the provided prison guarantee to have been honoured given his actions.

64. We have already expressed our disapproval of this approach. We do not repeat it here. There is nothing to suggest there was a deliberate intention to breach assurances given to the UK, but a misguided approach has been adopted. We anticipate that in light of our judgment, the Hungarian authorities will not in future seek waivers from prisoners coming from the UK with assurances of minimum levels of personal space while in detention, and will not treat their own conduct in acceding to refusals to transfer to CPT compliant prisons as constituting compliance with such assurances given to the UK.

The two German cases

65. Janos Szikszai: The Appellants contend that Mr Szikszai was extradited from Germany on 21 July 2016 with an assurance to the German authorities that he would be placed in a single occupancy cell. We note that it is not suggested that an assurance was given in relation to minimum personal space. We have not been provided with a copy of any assurance given in his case. We also note that, whilst it is alleged that he was required to share a cell with other inmates (varying from 1 to 9 different times) for at least five

periods in different prisons in breach of the assurance in his case, there is no evidence that his Article 3 rights were breached.

66. Peter Kulscar: It is alleged that he was extradited from Germany on 27 September 2016 with assurances that he would be guaranteed 3m² of space, natural light, ventilation, a partitioned toilet and would be detained in either Szombathely or Tiszalok National Prisons. Dr Kádár states that the original assurance is not available in his case. The Appellants rely on seven alleged breaches of assurances, and have detailed these. They include substantial periods where he was not allegedly held at either prison and relatively long periods when he was not allegedly provided with the minimum guaranteed personal space.

67. As we have already observed, the Ministry of Justice of Hungary has provided no information to contradict the evidence in these two cases because of Hungarian data protection. Hence, we are without the other side of these stories.

68. So far as the evidence in relation to assurances given to Germany is concerned, Mr Hall invites us, in the absence of even a generalised denial, to conclude from the available evidence that there have indeed been breaches of the German assurances as alleged in these two cases. Alternatively, he invites us to request information from the Hungarian authorities pursuant to Article 15(2) which is wide enough to encompass information relating to breaches of assurances given in other countries. If a request is made, it would then be for the Hungarian authorities to comply with it or to explain specifically why their data protection laws do not allow the provision of such information.

Discussion and Conclusions

69. For the reasons given above, we have concluded that it is not appropriate in this case to make findings of fact in relation to the German cases given the paucity of evidence available to us. We decline to ask questions of Hungary.

70. While it is tolerably clear that Hungary's obligations pursuant to Article 15(2) would override their domestic law of privacy of information, it will immediately be clear that would likely lead to protracted litigation in Hungary, all on a satellite point to the issue in this case. This demonstrates well why reliance on non-UK cases should be rare.

71. Our focus must be on the core question of whether Hungary can be relied upon to comply with an assurance given to the UK, and on that question alleged breaches of past assurances given to the UK are of obvious and central relevance. The evidence relating to the two German cases here is not directly relevant to the issue that we must decide, and we do not consider it to be of real importance for the purpose of deciding the core question in this case.

72. Taking the evidence of breaches of assurances given by Hungary overall, there is specific evidence in relation to four extraditions based on minimum space guarantees given to the UK. Of the four cases referred to by the Appellants, there is evidence of what are short term breaches, mainly in the period following arrival, in only two of the cases relied on: Salikh and Szabo. The breaches were remedied and not apparently repeated.

73. The limited evidence of breach provided by the Appellants must also be seen in its wider context, namely the clear evidence of actual improvement in the prison estate in Hungary and in particular, in the reduction of the level of overcrowding in prisons. We note that, in addition to the role of the Commission of the Protection of Fundamental Rights who can deal with complaints about acts or omissions of prison authorities, there is a system of public prosecutors in charge of supervising the lawfulness of the execution of sentences and of protecting inmate rights; and penitentiary judges who check the penitentiary staff members of the detention facilities.

74. We do not consider that this limited evidence demonstrates a systemic problem affecting assurances given to the UK generally (although we have expressed our concern in relation to the practice of treating acceptance of requests not to transfer as excusing further compliance, and do not expect this practice to continue in consequence); nor does it undermine the mutual trust upon which the system of assurances is based. We accept Mr Hines's submission that the Hungarian Ministry of Justice has made significant efforts to assist the UK court and demonstrated its continued willingness to engage with the UK court in relation to assurances given in the context of extradition. We accept this serves to support a conclusion that the Hungarian authorities do respect and honour the UK assurances.

75. We have considered the argument, based on the judgment in *ML*, that courts in the United Kingdom should only accept assurances from requesting judicial authorities, from judges, rather than relevant representatives of the state. We reject that, as a point of principle. In our view, this is not anything like a clear implication from *ML*. It would be a curious conclusion, since the judiciary do not control the prison conditions which are the subject of these assurances. It would also represent a departure from established practice. We reject this submission.

76. The evidence of breach in these two specific cases does not necessarily imply that the Appellants will be subjected to inhuman or degrading treatment if surrendered to Hungary. It is necessary to consider whether there are now substantial grounds to believe that they will be exposed to a real risk of breach of their Article 3 rights if returned to Hungary to serve their sentences.

77. On this question we agree with Mr Hines. Firstly, there is no evidence of a systemic problem affecting the reliability of assurances given by the Ministry of Justice of Hungary. Secondly, it remains possible for the Hungarian authorities to detain the Appellants consistently with assurances given to this court. We have no proper basis for concluding they cannot or will not do so. There is nothing in the evidence and submissions before this court which displaces that assumption. Accordingly, taking account of all the evidence now available we are satisfied that there are no substantial grounds to believe that the Appellants, if returned to Hungary for trial and/or to serve out their sentences, will be at real risk of a breach of their Article 3 rights either during any initial period of detention or at any prison to which they may be allocated while on remand or serving any sentence.

78. In light of our conclusion, it is clear that, even if admitted, we do not consider that the fresh evidence advanced would afford a ground for allowing the appeals, still less that it would be decisive. Accordingly, notwithstanding the degree of latitude to be afforded in cases involving human rights, we have concluded that no purpose would be served

in admitting this fresh evidence and that it would not be unjust to refuse to do so in all the circumstances.

79. It follows that we refuse the application to admit the new evidence and reject the appeals based on Article 3.

Article 8: First Appellant (Mr Szalai)

80. In writing (not pursued orally) the First Appellant contends that the decision to extradite him constitutes a disproportionate interference with his Article 8 rights. The court has earlier ruled against the application to adduce further psychiatric evidence in his case.

81. The district judge expressly considered the First Appellant's poor physical and mental health as a factor weighing against extradition. There was evidence about the deterioration in his mental health following the deportation order on 23 March 2018 and that he started to contemplate suicide from then onwards. The psychiatric report of Dr Kottaigi dated 2 November 2017 (which was available to the district judge) concluded that he suffered from "mild to moderate depression" precipitated by his mother's death in December 2016 and compounded by contact with the criminal justice system. He presented with low mood, sleeping difficulties and fleeting thoughts of self-harm but with no immediate plans or intention. The First Appellant gave evidence at the extradition hearing that he cut his wrist in a suicide attempt on 20 June 2018 and received stitches from a prison nurse. However, having heard the First Appellant give evidence, the district judge concluded that his account of his mental health was self-serving and in some respects, exaggerated. There was evidence to support that conclusion which cannot be impugned.

82. In our judgment the district judge carried out a careful balancing exercise that led to his conclusion that it would not be a disproportionate interference for the First Appellant to be extradited. Factors in favour of granting extradition were his fugitive status having deliberately fled Hungary to avoid his sentence; the strong and continuing public interest in the UK abiding by its international obligations and according a proper degree of confidence and respect to decisions of the issuing judicial authority; the fact that he has a substantial term to serve; and that he has a criminal record in the UK. These factors are correctly identified as the First Appellant appears to accept. Factors against extradition were that he has been settled in the UK since 2012, is in poor physical and mental health and the offences occurred in 2010. Again, these factors are correctly identified.

83. We do not consider that the district judge made the wrong decision in striking the balance as he did. In the absence of credible evidence to the contrary, we proceed on the basis that Hungary will discharge its responsibilities to ensure that treatment is available as appropriate to the First Appellant and will take proper steps to mitigate against any risk of self-harm. Moreover, given the factors identified above and in particular, the First Appellant's limited ties to the UK (he is single and has no children or family in the UK) and his fugitive status alongside the public interest in extradition, the district judge was both entitled and correct to conclude that extradition is proportionate in this case. There is no arguable error in this conclusion and in those circumstances the ground of appeal against the district judge's findings in relation to Article 8.

Conclusion

84. For all these reasons we dismiss the appeals. The extradition must proceed in both cases.