Neutral Citation Number: [2020] EWHC 3512 (Admin)

Case No: CO/541/2020 & CO/543/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2020

Before:

MR JUSTICE SWIFT

- -

Between:

(1) MOHAMMED GHIAS UDDIN PATMAN
(2) DARYA KHAN SAFI **Appellants**

- and –

SPECIALIST CRIMINAL COURT IN PEZINOK, SLOVAKIA **Respondent**

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Laura Herbert (instructed by **Advice Wise Solicitors**) for Mr. Patman, the **First Appellant**
Peter Caldwell (instructed by **Armstrong Solicitors**) for Mr. Safi, the **Second Appellant**
James Stansfeld (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 1st & 2nd December 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00 am 21 December 2020.

MR JUSTICE SWIFT:

A. Introduction

(1) The European Arrests Warrants

1. Mohammed Patman and Darya Safi are cousins. Both are Afghan by birth. Each came to the United Kingdom (Mr Patman in 2000, Mr Safi in 2001) and made a successful claim for asylum. Each has lived in the United Kingdom since. Each is the subject of a European Arrest Warrant ("EAW") issued by the Specialist Court Pezinok, Slovakia ("the RJA"). Both warrants were issued on 28 August 2019 and were certified by the National Crime Agency ("NCA") on 3 September 2019. The warrants are accusation warrants. In summary, the warrants allege that from August 2018 Mr Patman and Mr Safi acting together "intentionally preparing murder" of Khadija Cohen ("K"). K is Mr Patman's daughter.

2. Section (e) of each EAW, which sets out the "description of the circumstances in which the offence was committed …", contains a lengthy narrative of the factual allegations. It is alleged that Mr Patman and Mr Safi took steps to murder K because they believed she had disgraced her family by her choice of husband, by converting from Islam to Judaism, and by her choice of career. K lives with her husband in Slovakia. She is described as having her permanent residence there. It appears that before living in Slovakia, K and her husband lived in Austria. It is alleged that in August 2018 Mr Safi flew to Slovakia and was "actively searching" for K. It is alleged he met with Ramazan Kalandar and asked him to find someone who could find K, take pictures of her and lure her somewhere where she could be kidnapped and then killed, either by that person or by one or other of Mr Safi or Mr Patman. It is said that Mr Kalandar was offered €50,000, and that there is evidence that surveillance of K took place. It is alleged that Mr Patman travelled to Slovakia in October 2018 and looked up information about where K lived and where she worked. It is said that he also met with Mr Kalandar on several occasions asking him to find someone either to help them kill K or to kill K for them. Next it is said that Mr Patman travelled to Austria for a week in late January 2019 searching for K's former residence. It is claimed that he monitored that location for about a week and during this time was in regular contact with Mr Safi. Mr Patman then travelled to Slovakia in February 2019 and spent time surveying where K lived and where she worked. Section (e) of the EAW also contained the following passage

> "…accused Mohammed Ghiasuddin PATMAN and Darya Khan SAFI intend to kill the victim at the territory of the Slovak Republic or, alternatively, Austria, in yet not exactly specified way either by using improvised explosive device at locations where the victim is usually walking or staying or in any other, yet unspecified way at such location or in their motor vehicle supposing they would manage to kidnap the victim using that vehicle, or in other way; no attempt has been made until now nor has the murder been completed yet…"

3. The charge faced by Mr Patman and Mr Safi is a charge of preparation to murder under section 13 of the Slovakian Criminal Code, read together with the provision at section 20 of that Code concerning accomplices. By section 13(1) of the Code the offence of preparation for committing a felony is formulated as follows

> "(1) Preparation for committing a felony means wilful organisation of a criminal act, procurement or adaptation of means or instruments for its commission, associating, grouping, instigating, contracting, abetting or aiding in such crime, or other deliberate actions designed to create conditions for its commission, where a felony has been neither attempted nor completed."

Section 13(2) states that "Preparation for committing a felony shall carry the same punishment felony for which it has been intended." Section 20 of the Slovakian Criminal Code provides

> "If criminal offence was committed by two or more persons acting in conjunction (accomplices), each of them has the same criminal liability as the single person who would commit such a criminal offence."

(2) The issues in the appeal

4. On 6 February 2020 District Judge McGarva made Orders for the extradition of Mr Patman and Mr Safi to Slovakia. The submissions made in this appeal against those Orders largely follow the submissions canvassed before the District Judge. Both Mr Patman and Mr Safi contend that they should not be extradited by reason of section 19B of the Extradition Act 2003 ("the 2003 Act"), the forum bar to extradition. Mr Patman also contends that he should not be extradited by reason of article 5(2) of the Framework Decision. Mr Safi submits that his extradition would be contrary to section 25 of the 2003 Act, i.e., that by reason of his health extradition would be unjust or oppressive.

(3) New evidence

5. All parties seek to rely on information that was not before the District Judge at the extradition hearing. I will consider the admissibility of this material when dealing with the substantive grounds of appeal. The RJA seeks permission to rely (a) on a statement dated 27 November 2020 by Matthew Perfect of the National Crime Agency; (b) on the exhibit to that statement which is a copy of a Memorandum of Understanding dated 6 December 2018 made between the NCA and the Slovakian Police (the Narodna Kriminalna Agentura, "the NAKA") concerning the investigation into Mr Patman and Mr Safi; and (c) on a letter from the RJA dated 24 November 2020, in response to a request by the Crown Prosecution Service sent on or about 23 November 2020, which provides information concerning the status of Mr Kalandar (as suspect or witness) and the scope of the evidence held by the Slovakian authorities.

6. By an Application Notice dated 17 November 2020 Mr Patman seeks permission to rely on a medical report dated 13 November 2020. The report is from Dr Nuwan Galappathie, a Consultant Forensic Psychiatrist who works at the Huntercombe Centre in Birmingham. Dr Galappathie's report concerns the health of Zarmina Patman, Mr Patman's wife. By the same Application Notice Mr Patman seeks permission to rely on a statement by a Slovakian lawyer Dr Ivan Syrovy. This statement concerns the provisions in Slovakian law on eligibility for parole. This is relevant to the submission made on article 5 on the Framework Decision.

7. Mr Safi's application to rely on new evidence was made on 25 June 2020 and seeks permission to rely on an expert report dated 29 May 2020 by Dr Muffazal Rawala, a medical practitioner approved under section 12(2) of the Mental Health Act 1983 as having specialist experience in the diagnosis and treatment of mental disorders. Dr Rawala's report addresses Mr Safi's mental health. In addition, Mr Safi seeks to rely on the following three witness statements: (a) Nicola Babb dated 17 November 2020, his solicitor; (b) Nazia Safi dated 17 November 2020, his wife; and (c) Mr Patman, dated 13 July 2020.

B. Decision

(1) Section 19B of the 2003 Act. Forum bar

8. Section 19B of the of the 2003 Act provides a bar to extradition by reason of forum. The section is in the following terms:

> **"19B Forum**
>
> (1) The extradition of a person ("D") to a category 1 territory is barred by reason of forum if the extradition would not be in the interests of justice.
>
> (2) For the purposes of this section, the extradition would not be in the interests of justice if the judge—
>
> (a) decides that a substantial measure of D's relevant activity was performed in the United Kingdom; and
>
> (b) decides, having regard to the specified matters relating to the interests of justice (and only those matters), that the extradition should not take place.
>
> (3) These are the specified matters relating to the interests of justice—
>
> (a) the place where most of the loss or harm resulting from the extradition offence occurred or was intended to occur;
>
> (b) the interests of any victims of the extradition offence;
>
> (c) any belief of a prosecutor that the United Kingdom, or a particular part of the United Kingdom, is not the most appropriate jurisdiction in which to prosecute D in respect of the conduct constituting the extradition offence;
>
> (d) were D to be prosecuted in a part of the United Kingdom for an offence that corresponds to the extradition offence, whether evidence necessary to prove the offence is or could be made available in the United Kingdom;

> (e) any delay that might result from proceeding in one jurisdiction rather than another;
>
> (f) the desirability and practicability of all prosecutions relating to the extradition offence taking place in one jurisdiction, having regard (in particular) to—
>
> > (i) the jurisdictions in which witnesses, co—defendants and other suspects are located, and
> >
> > (ii) the practicability of the evidence of such persons being given in the United Kingdom or in jurisdictions outside the United Kingdom;
>
> (g) D's connections with the United Kingdom.
>
> (4) In deciding whether the extradition would not be in the interests of justice, the judge must have regard to the desirability of not requiring the disclosure of material which is subject to restrictions on disclosure in the category 1 territory concerned.
>
> (5) If, on an application by a prosecutor, it appears to the judge that the prosecutor has considered the offences for which D could be prosecuted in the United Kingdom, or a part of the United Kingdom, in respect of the conduct constituting the extradition offence, the judge must make that prosecutor a party to the proceedings on the question of whether D's extradition is barred by reason of forum.
>
> (6) In this section *"D's relevant activity"* means activity which is material to the commission of the extradition offence and which is alleged to have been performed by D."

9. In this case, the District Judge concluded that a substantial measure of activity material to the commission of the offence for which extradition is sought had been performed in the United Kingdom. At paragraph 17 of his Judgment he said this:

> "It is clear that any murder was intended to take place in Slovakia or Austria. Reconnaissance visits to both countries were made, approaches were made to persons in Slovakia to assist in the planned offence. There were activities in the United Kingdom, car windows were blacked out and winter tyres fitted to the car to be used for visits, there was phone communications between the two Requested Persons in this country and also between them when one was in Austria/Slovakia. There was clearly activity in the United Kingdom and any agreement to commit the crime was probably made in the United Kingdom given both Requested Persons are resident here. That said the bulk of activity was in Slovakia which is where the proposed offence would have been committed. I take the view that there was enough activity in the United Kingdom to amount to a "substantial measure of D's

> relevant activity", the gateway for considering the factors in Section 19B(3) is therefore opened. That being the case I am required to go on to consider Section 19B(3) and whether it is in the interest of justice to extradite."

The District Judge then considered the section 19B(2)(b) question, by reference to the matters listed at section 19B(3): see the judgment at paragraphs 19 to 25. At paragraph 26 the District Judge stated his overall conclusion

> "No particular factor under Section 19B(3) has inherently more weight than any other, the weight to be attached to each factor is case specific; it is a matter for me as appropriate judge to weigh the various factors in the section and attach the appropriate weight to each one, I must not consider any extraneous factors. In this case the place where the harm was intended to occur is in my view a particularly powerful factor, as is the interests of the victim and the potential for delay if the United Kingdom is chosen as venue. The warrant leads me to conclude there is the possibility there will be a co-accused Ramazan Kalandar who is an Afghan-Pashto who appears to have been in Bratislava in August 2018 and who seems lightly to have been selected as an accomplice because of connections in Slovakia. I cannot put that factor as a particularly strong one as it is really speculation. Paragraphs (c) and (d) are really neutral. The one factor that is strongly in favour of the Requested Persons is their strong connections to the United Kingdom. Extradition would be barred under Section 19B(3) Extradition Act 2003 if it were not in the interests of justice. In my view the Requested Person's connections to the United Kingdom do not make it contrary to the interest of justice to order extradition given the alleged plan to commit murder was intended to be committed in Slovakia and given the delay that would be undoubtedly caused by starting a prosecution in the United Kingdom. I therefore do not find extradition barred under the section 19B(1) Extradition Act 2013."

10. In this appeal a number of matters are raised that go to the District Judge's consideration of the matters at section 19B(3)(a) – (g). Some of these submissions are made by reference to the new material: for example, submissions from the RJA about matters (b), (d), (e) and (f) on the basis of further information from the Slovakian authorities in the letter dated 24 November 2020; and submissions on behalf of Mr Patman on matter (g) made by reference to new medical evidence about the state of his wife's health. Other submissions are made without reference to new material and are to the effect that the significance attached to the District Judge to various matters was wrong (for example the submissions made on behalf of Mr Patman and Mr Safi respectively, on matter (a) and, regardless of any new evidence, matter (b)).

11. The first issue is what is the proper approach to take, in this appeal, to the District Judge's conclusion on the (non-) application of the section 19B of the 2003 Act. I have been referred to the judgments of Aikens LJ in *Shaw v Government of the United States of America* [2014] EWHC 4654 (Admin) at paragraphs 42-43, and *Atraskevic v*

Prosecutor General's Office, Republic of Lithuania [2016] 1 WLR 2762 at paragraphs 32-35, and to the judgment of Lord Burnett CJ and Ouseley J in *Love v Government of the United States of America* [2018] 1 WLR 2889 at paragraph 26. The combined effect of these judgments is this. The starting point is section 27(3) of the 2003 Act. The issue for the appeal court is whether the question (i.e. on the application on of the section 19B forum bar) ought to have been decided differently. For an appeal to succeed there is no requirement that the court below committed a "judicial review-style error" (i.e. error of principle, irrational outcome, took account of something irrelevant, or failed to account for a relevant matter). However, if such an error is present the standard required by section 27(3) may well be met. The decision under section 19B(2)(b) requires an overall value judgment not dissimilar to the evaluation of proportionality under ECHR article 8. What is required of the appeal court takes its shape accordingly. The principles applied in the Supreme Court in *In Re B(A Child)(Care Proceedings; Threshold Criteria)* [2013] 1 WLR 1911 are apposite. In his judgment in that case Lord Neuberger formulated the matter in this way

> "90. The argument that the Convention or the 1998 Act requires the Court of Appeal to form its own view in every case where a trial judge's decision on proportionality is challenged, appears to me to be wrong in principle and potentially unfair or inconvenient. The argument is wrong in principle because, if the function of the Court of Appeal is as I have described, then, in my view, there can be no breach of the Convention or the 1998 Act, if it conducts a review of the trial judge's decision and only reverses it if satisfied that it was wrong. The only basis for challenging that view is, on analysis, circular, as it involves assuming that the Court of Appeal's primary function is to reconsider not to review. The argument is potentially unfair or inconvenient, because in cases where the appeal court could not be sure whether the trial judge was right or wrong without hearing the evidence and seeing the witnesses, it would either to have to reach a decision knowing that it was less satisfactorily based than that of the judge, or it would have to hear the evidence and see the witnesses for itself.
>
> 91. That conclusion leaves open the standard which an appellate court should apply when determining whether the trial judge was entitled to reach his conclusion on proportionality, once the appellate court is satisfied that the conclusion was based on justifiable primary facts and assessments. In my view, an appellate court should not interfere with the trial judge's conclusion on proportionality in such a case, unless it decides that that conclusion was wrong. I do not agree with the view that the appellate court has to consider that judge's conclusion was "plainly" wrong on the issue of proportionality before it can be varied or reversed. As Lord Wilson JSC says in para 44, either "plainly" adds nothing, in which case it should be abandoned as it will cause confusion, or it means that an appellate court cannot vary or reverse a judge's conclusion on proportionality of it considers it to have been "merely" wrong. Whatever view the

Strasbourg court may take of such a notion, I cannot accept it, as it appears to me to undermine the role of judges in the field of human rights.

92. I appreciate that the attachment of adverbs to "wrong" was impliedly approved by Lord Fraser in the passage cited from *G v G (Minors: Custody Appeal)* [1985] 1 WLR 647, 652, by Lord Wilson JSC at para 38, and has something of a pedigree: see e.g. per Ward LJ in *Assicurazioni* [2013] 1 WLR 577, para 195 (although aspects of his approach have been disapproved: see *Datec* [2007] 1 WLR 1325, para 46). However, at least where convention questions such as proportionality are being considered on an appeal, I consider that, if after reviewing the trial judge's decision, an appeal court considers that he was wrong, then the appeal should be allowed. Thus, a finding that he was wrong is a sufficient condition for allowing an appeal against the trial judge's conclusion on proportionality, and, indeed, it is a necessary condition (save, conceivably, in very rare cases).

93. There is a danger in over-analysis, but I would add this. An appellate judge may conclude that the trial judge's conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupportable. The appeal must be dismissed if the appellate judge's view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).

94. As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or a white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge's decision was not based on his assessment of the witnesses' reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence, which are factors whose significance depends on the particular case. However, if, after such anxious consideration, an appellate judge adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal.

95. I am conscious that the analysis in paras 80–90 appears to differ somewhat from that of Baroness Hale JSC in paras 204–205 and of Lord Kerr JSC in paras 116–127. However, at least

> in my opinion, it would, essentially for two reasons, be a very rare case where their approach would produce a different outcome from mine. First, it is only my category (iv) which gives rise to disagreement, in that they would not, as I understand it, accept that such types of case exist. However, many, probably most, cases that on my approach would fall into that category would, on their approach (especially in the light of what they say about the weight to be given to the trial judge's assessment) be in category (iii), which would yield the same outcome. Secondly, the advantage which the trial judge has in hearing the evidence and seeing the witnesses will mainly apply to his findings of primary fact, inferences of fact, and assessment of probable outcomes, which then feed into his assessment of proportionality (and, in this case, necessity). When those factors come to be weighed on the question of proportionality (or necessity), the advantage the trial judge has will normally be of less significance, and sometimes even of very little, if any, significance."

12. In this appeal the position is somewhat muddied if the new evidence not available to the District Judge is admitted. To the extent that new evidence is admitted in order to correct evidence before the District Judge on any of the section 19B matters, I must consider whether his overall assessment was wrong by reference to the corrected evidence. The same applies to new evidence that supplements what was available to him in respect of any of the section 19B matters. To this extent, in this case, whether or not the District Judge ought to have decided the section 19B question "differently", will be decided at something less than the usual arm's length than suggested by Lord Neuberger's judgment in *Re B*. All this goes to show is that what is required by section 27(3) of the 2003 Act is as much art as science.

13. Mr Patman objects to the RJA's application to introduce new evidence. Mr Safi is neutral on the matter. The principles relevant to whether this evidence is admissible are set out in the judgment of the Divisional Court in *FK v Germany* [2017] EWHC 2160 (Admin). At paragraphs 36-38 of his judgment in that case Hickinbottom LJ stated as follows

> "36. I do not consider that the absence of an express statutory provision restricting a respondent to an appeal to this court from seeking to have new evidence admitted to have been accidental. Such a restriction, if it were indeed the legislative intention, would have been easy enough to include. It could and, in my view, would have been included.
>
> 37. Certainly, I do not consider that the statutory scheme looked at as a whole, drives one to conclude that, outside the express restrictions in section 27 and 29 of the 2003 Act, as a matter of implication, Parliament intended the High Court's inherent jurisdiction to allow in fresh evidence to be excluded or for it to be restricted to evidence that strictly satisfies the *Fenyvesi* criteria. I find Mr Southey's submissions as to why that conclusion should be drawn to be unpersuasive.

> 38. Given the different nature of an extradition appeal, I do not consider that the approach taken in other appellate schemes (including *Ladd v Marshall*) to be helpful. The suggestion that to allow a respondent to put in further evidence that would fail to satisfy the *Fenyvesi* criteria would be to give the requesting authority/CPS an unfair advantage has no substance: the proposition applies to any respondent, whether it be the requesting authority or the requested person. Allowing a respondent to submit further evidence in support of the district judge's findings, far from delaying a matter, would often if not usually expedite it: it would avoid the situation where an EAW is discharged on the basis of some defect that could be cured by the provision of further information, only to be reissued with that information included. Nor do I accept that an appellant has less than a full opportunity to present evidence in relation to an EAW – that opportunity, given equally to both parties, arises before the district judge. Furthermore, if information were to be provided by the respondent which, the court considers, it is in the interests of justice to admit, the court would be likely to conclude that it would be in the interests of justice also to admit evidence in response or rebuttal. The statutory provisions merely avoid a party that loses before the district judge – whether that party be requested person or requesting authority – having a second bite of the cherry. They are therefore supportive of the principle of finality, and generally of the broad principles that underlie the Framework Directive. It is not contrary to the letter or spirit of article 6 of the ECHR, or the common law requirements for a fair trial, to allow a party on an appeal to submit further information in support of a decision of the district judge where (for example) that information might confirm a finding of fact made by the district judge, whilst proscribing an unsuccessful party from submitting further evidence in support of the proposition he was wrong. It is noteworthy that, in this case, Mr Southey expressly confirmed that the Appellant had suffered no arguable prejudice from the admission of the further information provided by the requesting authority in March 2017 following the court's request."

In this appeal neither Appellant submits he is prejudiced by admission of the late evidence now produced by the RJA. The information now provided is relevant to the appeal and provides a more complete picture of the investigation is Slovakia. For these reasons it is in the interests of justice to admit it.

14. The further information relied on by Mr Patman falls into the category at section 27(4) of the 2003 Act and therefore falls to be approached differently. The criteria set out in *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin) apply: i.e., that the evidence (1) was not available at the time of the extradition hearing, and (2) could not with reasonable diligence have been obtained at that time, and (3) is decisive in the

sense that had it been available to the District Judge he would have decided the relevant question differently and consequently have decided the appeal differently.

15. The evidence that Mr Patman now seeks to rely on is the expert report I have referred to from Dr Nuwan Galappathie in respect of the health of his wife, Zarmina Patman. I do not consider this evidence meets either the second or third *Fenyvesi* criteria. I will refer to the third criterion below when dealing with Mr Patman's submission on section 19B(3)(g). As to the second criterion, the information in the report could all have been obtained for the extradition hearing in February 2020. In summary, Dr Galappathie's opinion is that Mrs Patman suffers from depression; that this first developed in 2013 when K, her daughter, left home; and that her condition deteriorated significantly from September 2019 following her husband's arrest. Dr Galappathie states, by reference to Mrs Patman's GP's records that by 3 October 2019 Mrs Patman displayed "a range of depressive symptoms". Dr Galappathie notes the treatment prescribed by Mrs Patman's GP and considers this to be appropriate. Miss Herbert, who appears for Mr Patman points to paragraph 56 of Dr Galappathie's report where she describes how Mrs Patman presented on 8 November 2020 when she was examined by Dr Galappathie. Miss Herbert contrasts this with the entry in the GP's records for 3 October 2019 and submits that this demonstrates a progression in Mrs Patman's condition that makes good the contention that the medical evidence now available could not have been provided for the extradition hearing in February 2020. I disagree. The descriptions of how Mrs Patman presented on those two dates provide simple snapshots of her condition. However, the substance of Dr Galappathie's opinion is that the depression Mrs Patman presently suffers from has affected her in the same way as the latter part of 2019. This evidence could with reasonable diligence, have been available at the time of the extradition hearing.

16. I now address the substance of the section 19B argument. The present section 19B was introduced into the 2003 Act, by amendment made by the Crime and Courts Act 2013, with effect from 14 October 2013, in substitution of an earlier version of section 19B which had itself been inserted into the 2003 Act by the Police and Justice Act 2006 but had not been brought into force. The 2013 amendment followed from the Government's response to the document *"Review of the United Kingdom's Extradition Agreements"* undertaken by an expert panel lead by Sir Scott Baker. The recommendation in the Review was against the implementation of a forum bar for the reasons that its application from case to case was likely to be time-consuming, costly (for the parties to any claim), and might tend to undermine the efficient and the effective operation of the 2003 Act. The Government's response was informed by a report of the Home Affairs Select Committee. That Committee had considered a number of instances of requests for extradition, made by the government of the United States of America, which it considered to be exorbitant. The Committee concluded that

> "33. … The Committee believes that it would be in the interests of justice for decisions about forum in cases where there is concurrent jurisdiction to be taken by a judge in open court, where the defendant will have the opportunity to put his case, rather than in private by prosecutors. Indeed, Parliament has already legislated for that to happen. The Committee therefore recommends that the Government introduce a "forum bar" as soon as possible".

17. The Government's response to the Review considered that the provision later inserted into the 2003 Act as the new sections 19B and 83A (in Parts 1 and 2 of the 2003 Act respectively), represented an appropriate balance between the concerns noted by the Select Committee, and the concerns set out in the Review about the efficiency and effectiveness of arrangements in the 2003 Act.

18. Section 19B of the 2003 Act requires careful handling. When considering section 86A, its counterpart in Part 2 of the 2003 Act, in their judgment in *Love* Lord Burnett CJ and Ouseley J observed as follows

> "22. In our judgment, section 83A is clearly intended to provide a safeguard for requested persons, not distinctly to be found in any of the other bars to extradition or grounds for discharge, including section 87 and the wide scope of article 8 of the Convention. The safeguard is not confined to British nationals, but it is to be borne in mind that the United Kingdom is one of those countries which is prepared to extradite its own nationals. Its underlying aim is to prevent extradition where the offences can be fairly and effectively tried here, and it is not in the interests of justice that the requested person should be extradited. But close attention has to be paid to the wording of the statute rather than to short summaries of its purpose or to general parliamentary statements. The forum bar only arises if extradition would not be in the interests of justice: section 83A(1). The matters relevant to an evaluation of "the interests of justice" for these purposes are found in section 83A(2)(b). They do not leave to the court the task of some vague or broader evaluation of what is just. Nor is the bar a general provision requiring the court to form a view directly on which is the more suitable forum, let alone having regard to sentencing policy or the potential for prisoner transfer, save to the extent that one of the listed factors might in any particular case require consideration of it."

Thus, the notion of "interests of justice" is not a matter at large; rather it is carefully calibrated by the matters listed at section 19(3)[1]. The objective pursued by section 19B, a curb on claims to exorbitant jurisdiction, is also relevant because this too informs the choice of the matters which are listed in section 19B(3). There are no particular matters arising from the Framework Decision that affect the application of section 19B. There is no counterpart to or herald of section 19B in the Framework Decision. This may well reflect an unspoken premise that prosecutors in Member States will decide whether or not to prosecute cross-border crime by reference to the Eurojust Guidelines, most recently published in 2016 by the European Union Agency for Criminal Justice Cooperation, and will in that way avoid over-reach. Be that as it may, section 19B of the 2003 Act provides a material safeguard against over-reach in addition to the matters set out in the Framework Decision.

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[1] The scope of section 19B(1) is further constricted by section 19C which requires the court to conclude that no forum bar exists if there is a relevant prosecutor's certificate. This provision is not material for the purposes of this appeal.

19. In this case, even taking the new information not available at the extradition hearing into account, the section 19B forum bar does not operate to prevent extradition either of Mr Patman or Mr Safi.

20. On matter (a) the District Judge concluded "given the reconnaissance visits and attempts to recruit accomplices in Slovakia the harm was very much intended to be in Slovakia …" (Judgment at paragraph 19). Both Appellants criticise this conclusion, both point to the narrative at Section (e) in the respective EAWs which includes the statement that the Appellants intended to "… to kill the victim at the territory of the Slovak Republic or, alternatively Austria"; both then submit that the only intention alleged was to kill K, not to kill her in Slovakia. This submission misses the point. The "the extradition offence" is defined at section 19F of the 2003 Act to mean "the offence specified in the Part 1 warrant (including the conduct that constitutes the extradition offence)". It is therefore clear that the District Judge was correct both to consider not only the entirety of the narrative at Section (e) of each EAW, and to have well in mind the terms of the offence with which each Appellant is charged under section 13(1) of the Slovakian Criminal Code read with section 20 of that Code. On this basis the conclusion the Judge reached on matter (a) was plainly one he was entitled to reach. The activity that was central to the criminal offence alleged, the surveillance of K's home and place of work, took place in Slovakia. Given that K lived and worked in Slovakia it was a proper inference that had the Appellants carried through with the plan it is alleged they pursued, it is likely that K would have been killed in Slovakia. The recognition in Section (e) of each EAW that it was possible that the murder might have taken place in Austria is pragmatic since the allegation against each Appellant is that he wished to secure K's death and it seems to have been the case that, on occasion, K visited Austria. But the application of matter (a) in section 19B(3) ought not to encourage any exercise of elaborate deconstruction of the contents of an EAW. At paragraph 26 of his judgment the District Judge went on to state that in this case matter (a) was "a particularly powerful factor". This was certainly a conclusion properly open to him; in fact, it is a conclusion with which I agree.

21. The District Judge also considered matter (b) to be important and to point in favour of the conclusion that the forum bar did not apply. Mr Patman and Mr Safi submit that conclusion was wrong because both K and her husband are English-speaking British nationals. Since that is so, the submission goes, only little weight attaches to matter (b) which therefore becomes a neutral consideration.

22. I suspect that precisely the same submission was made to the District Judge. At paragraph 20 of his Judgment, he rejected the submission that K's interests would be as well served by proceedings in the United Kingdom. He noted that K is permanently resident in Slovakia and that if she were to give evidence at the trial, she would either have to travel to the United Kingdom or give evidence remotely. Given those matters, he was entitled to reach the conclusion that he did on matter (b). In fact, this part of the District Judge's reasoning is reinforced by the additional information now provided by the RJA. The 24 November 2020 letter states that K's address is now being kept secret, presumably to guard against any risk of harm to her. This suggests a further reason why K's interests better served by proceedings that do not require her to leave Slovakia.

23. No point arises as to matter (c). The District Judge regarded this as irrelevant in the facts of the case. Neither Appellant contests this.

24. On the facts of this case matters (d) and (e) can be considered together. The District Judge concluded that matter (d) was neutral. At paragraph 22 of the Judgment, he assumed that because of the joint working arrangements in this case between the NCA and NAKA (the extent of which is now clarified by the terms of the Memorandum of Understanding exhibited to Mr Perfect's witness statement), some of the relevant evidence was likely to be in England already and that the remainder of it could be made available if necessary. On matter (e) the District Judge recognised the scale of the investigation concluding it would be a "a big task" for the English prosecutor to take the matter over, and that in consequence if criminal proceedings against the Appellants were to take place in England there would be delay. Thus, having recognised at (d) the theoretical possibility that the evidence against the Appellants could be available in England, when it came to matter (e) the District Judge recognised the practical reality. He went on to conclude at paragraph 26 that matter (e) was "a powerful factor" indicating that no forum bar applied.

25. For this appeal more information relevant to (d) and (e) is available by reason of the RJA's letter of 24 November 2020. The RJA confirms that all evidence gathered is available in Slovakia (including the evidence of the Appellants' activities in England). The evidence is both in electronic and documentary forms. It includes intercept evidence and transcripts of intercepted phone calls. The investigation file comprises some 2000 pages. The prosecution will depend on the evidence of witnesses who are resident in Slovakia, including Mr Kalandar. In my view this further information both tends to reinforce the District Judge's conclusion on matter (e), and also tends to undermine his conclusion on matter (d) to the extent that witnesses who are resident in Slovakia could not be compelled to attend a trial conducted in England.

26. The submissions for Mr Patman and Mr Safi emphasise three points. *First* that matter (d) only concerns the evidence "necessary to prove the offence"; and that this may be less than all the evidence gathered in an investigation; and in this case the evidence gathered in England by the NCA under the joint working arrangement with the NAKA would be sufficient. *Second*, even if the first point is disregarded, the District Judge placed too little weight on the conclusion that all evidence gathered in the investigation could in principle be transferred to England. For either of these reasons it is submitted matter (d) points against extradition. *Third*, the District Judge's conclusion on matter (e) was wrong. He attached too much weight to the difficulties arising if the evidence were to be transferred from Slovakia to England, and insufficient weight to the possibility that witnesses resident in Slovakia might give evidence in English proceedings via video link (something the District Judge did mention when dealing with matter (f), but not when dealing with matter (d)).

27. I reject these submissions for two reasons. The first reason is that none comes to anything more than a submission that the District Judge weighed the evidence wrongly. In a case such at this and on matters such as (d) and (e), assessments are rarely "right or wrong". I can see nothing obviously wrong with the District Judge's assessment on matter (e); it was a view he was entitled to reach. If any criticism can be made of his conclusion on matter (d) it does not assist the Appellants. To my mind it is odd that when considering matter (d) the District Judge did not consider how the evidence of witnesses who are resident in Slovakia could be made available in proceedings in England. I consider his reference (in his reasoning on matter (f)) that any witnesses resident in Slovakia could give evidence by video link to be altogether too slight a

treatment of this point. This leads to my second reason. When applying criteria such as matters (d) and (e) it is important to keep a grip on what is practical and what is effective. Given that the genesis of provisions such as section 19B was to guard against exorbitant requests for extradition it is wrong in principle to apply the section 19B(3) criteria simply to assert an exorbitant jurisdiction for the English court. Put another way, there is no reason either to read or apply the section 19B(3) criteria in a way that would subvert the mutuality or effectiveness of the EAW system. The overall rubric in section 19B(1) is the "interests of justice". Even though section 19B(3) gives that notion a specific content, matters (d) and (e) must be approached pragmatically paying due regard to the practical requirements of an effective prosecution. Theoretical possibility is not standard. For example, matters (d) and (e) are not invitations to identify either the minimum possible evidence that might suffice to prosecute, or to assume that simply because the technology exists to permit evidence to be admitted remotely that is the only course that may be legitimately be taken. In the present case the Appellants' submissions not only fail to undermine the District Judge's conclusions in any way that assists them, they also encourage a rather unrealistic approach to what, in this context, the interests of justice require.

28. The District Judge does appear to have attached some weight to matter (f) on the basis that it was possible that Mr Kalandar was a co-defendant who might be tried in Slovakia regardless of whether or not Mr Patman or Mr Safi were extradited: see his judgment at paragraphs 24 and 26. It is now clear that Mr Kalandar is a witness for the prosecution, not a co-defendant. This being so, matter (f) is neutral in this case.

29. Miss Herbert, for Mr Patman, submitted that matter (f) remained relevant not withstanding that there was no possibility that prosecutions relating to the extradition would take place in more than one jurisdiction. She submitted that even though there would be only one prosecution, matter (f) allows the court to consider where potential witnesses may be located. I do not accept this submission; the opening words of matter (f) make clear that it only comes into play in situations where prosecutions may take place in more than one jurisdiction.

30. The District Judge accepted that matter (g) was a matter strongly in favour of the forum bar: see judgment at paragraph 26. In this appeal Mr Patman submits that more weight should be attached to this consideration because of his wife's depression. For the reasons above (at paragraph 15) that evidence is not admissible now because with reasonable diligence it could have been available at the time of the extradition hearing. In any event, even if admitted it is not evidence capable of being decisive. In their judgment in *Love*, Lord Burnett CJ and Ouseley J identified the limits of matter (g). At paragraph 40 they stated as follows

> "40. (g) *Connections with the United Kingdom*: The judge was right to reject Mr Caldwell's submission, repeated with due restraint before us, that the concept of "connection" was a narrow one, confined to connections to the United Kingdom as a state, principally citizenship or right of residence. In our judgment, "connection" goes rather wider than that, without being so elastic that it replicates the full scope of article 8 of the Convention. No exhaustive definition can be attempted judicially, but "connection" is closer to the notion of ties for the purposes of bail decisions. It would cover family ties, their nature and

> strength, employment and studies, property, duration and status of residence, and nationality. It would not usually cover health conditions or medical treatment, unless there was something particular about the nature of the medical condition or the treatment it required, that connected the individual to treatment in the United Kingdom. The approach of the judge was correct."

This shows that a purposive approach is required. For example, the reason why "connection" as used in matter (g) is not to be understood as covering all matters that might fall within the scope of ECHR article 8(1) is that the overwhelming majority of such matters have no bearing at all on the purpose pursued by the section 19B forum bar. While it is likely that in all instances it will be relevant to consider whether the requested person is a British national or has a right to reside in the United Kingdom, whether other matters, for example family or personal ties, are relevant and if they are relevant the weight attaching to them, will depend on the circumstances of the case and specifically whether they are matters that touch upon the appropriateness of the forum. Otherwise, as recognised by the court in *Love*, matter (g) risks becoming a reincarnation of ECHR article 8(1) without the moderating influence of the justification provisions in article 8(2). This would render section 19B unruly, and risk distorting the carefully calibrated scheme for decisions on extradition requests set out in the 2003 Act. On the facts before the court in *Love*, Mr Love's mental health was the reason why particular aspects of his private life were relevant to the forum bar enquiry (in that case under section 83A in Part 2 of the 2003 Act): see the reasoning of the court at paragraph 43.

31. In this case even if my conclusion about the timing of the evidence relating to Mrs Patman's health is put to one side, it is not evidence that adds anything material to the argument that Mr Patman's connections with the United Kingdom should give rise to a forum bar to extradition.

32. Mr Safi's submission on matter (g) is that new evidence about his own health means that additional weight now attaches to this matter. This evidence is admissible (see below at paragraph 43), but I do not accept the submission made by reference to it. In *Love*, the court made it clear that evidence of this kind will not ordinarily be relevant to matter (g). There is nothing in the circumstances of Mr Safi's case which calls for any different conclusion in his appeal.

33. Having considered each of the matters listed in section 19B(3), I can see no good reason to conclude that the District Judge reached the wrong conclusion. I consider he was correct to conclude that in this case matters (a) and (b) are powerful considerations. His conclusion on matter (b) is reinforced by the further information from the RJA in the 24 November 2020 letter. For the reasons I have already given I also consider matters (d) and (e) are important and point against the operation of the forum bar. Although Mr Patman and Mr Safi each has relevant connections with the United Kingdom that is not determinative in either case. What is alleged in each EAW is that Mr Patman and Mr Safi took steps to plan K's murder. K lives and works in Slovakia. Mr Patman and Mr Safi both spent time in Slovakia looking for K and surveilling where she lived and her place of work. It is alleged they sought Mr Kalandar's help in Slovakia. Looking at this case in the round and by reference to the matters listed at section 19B(3), it cannot be said that the interests of justice weigh against the extradition of either Appellant.

(2) Article 5 of the Framework Decision

34. Mr Patman's Grounds of Appeal contended that if convicted in Slovakia he faced a real risk either that he would be imprisoned for life without the possibility of parole, or that the terms of his sentence might prevent him making any application for parole until he had served at least 25 years. The Grounds contended (based on the authority of *Vinter v United Kingdom* (2016) EHRR 1) that the former scenario would amount to ill-treatment contrary to ECHR article 3; and that the latter scenario required consideration by reference to article 5(2) of the Framework Decision.

35. The article 3 point has now fallen away. Part of the new information provided by Dr Syrovy confirms that under Slovakian law it is no longer permitted to impose a sentence of life imprisonment without the possibility of parole.

36. So far as concerns the submission based on Article 5(2) of the Framework Decision, Dr Syrovy states as follows:

> "In the case that Mr Patman receives a life custodial sentence, according to section 67(2) of act 300/2005 Coll. Criminal Code, it is possible to review sentence and ask for conditional discharge after convicted person has served at least 25 years of such sentence."

37. Article 5 of the Framework Decision is as follows:

> "**Guarantees to be given by the issuing Member State in particular cases**
>
> The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:
>
> …
>
> 2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
>
> 3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial

> sentence or detention order passed against him in the issuing Member State."

38. In his judgment, the District Judge focused attention on the ECHR article 3 issue rather than any matter arising solely from article 5 of the Framework Decision. The District Judge did not have the benefit of the evidence now provided by Dr Syrovy that sentences of life imprisonment without the possibility of parole may no longer be imposed under Slovakian law. Nevertheless, based on the evidence that was available to him he concluded that there was no serious reason to believe that any punishment imposed on Mr Patman would amount to article 3 ill treatment; see his judgment at paragraph 29. The Skeleton Argument for Mr Patman for that hearing does not suggest that any discrete submission concerning article 5(2) of the Framework Decision was advanced.

39. The submission on the appeal is that

> "… where there is clear evidence that the executing judicial authority does not have provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years; that the UK courts should impose such a condition in order to give effect to the principles set out in FD given that this is a general objective that the Framework Decision is designed to advance."

40. I do not accept this submission. Article 5(2) of the Framework Decision does not establish any legal standard capable of being applied by a court. The purpose of article 5 is to identify what measures Member States may adopt to restrict the circumstances in which they will comply with requests for extradition pursuant to EAWs that are otherwise valid. There are obvious reasons why efficient operation of a system such as the EAW system requires that the extent of such measures should be prescribed. However, article 5 goes no further than permitting Member States to act in particular ways. Article 5 imposes no requirement to act. The 2003 Act does not contain any provision along the lines permitted by article 5(2) of the Framework Decision. Since that is so, and since article 5(2) does not reflect the content of any free-standing legal norm (i.e. any provision already present in English law), there is no relevant legal standard that can be applied.

41. It is submitted for Mr Patman that Part 1 of the 2003 Act is to be construed so as to give affect to the Framework Decision (cp. *Criminal Proceedings against Pupino* [2006] QB 83 at paragraph 43 of the judgment of the European Court of Justice). That is correct. However, article 5(2) does not establish any relevant requirement of law; it establishes no manageable legal standard capable of being read-in to the 2003 Act. Any attempt by the court to apply article 5(2), for example to decide, case by case, whether to impose a condition for review of sentence on request or after the passing of a specified period, would be a form of legislative act, and as such would be illegitimate. In the premises, this ground of appeal fails.

(3) Section 25 of the 2003 Act

42. The District Judge rejected Mr Safi's submission by reason of his health it would be unjust or oppressive to order extradition. He reached that conclusion having considered a psychiatric report dated 22 December 2019 by Dr Guy Hillman, a Consultant Psychiatrist in Forensic Psychotherapy at the Millfields Personality Disorder Unit. At the extradition hearing the section 25 submission was mixed with a further submission that imprisonment in Slovakia would amount to article 3 ill-treatment. The District Judge rejected both arguments for the following reasons

> "33. Mr Safi was very badly treated in Afghanistan, he was physically and psychologically tortured and certainly at one point presented with PTSD. He has attempted to take his own life in 2011 but is not viewed as actively contemplating suicide at the moment. He is suffering from a mild to moderate depressive episode which is susceptible to treatment. Dr Hillman's conclusion about the effect on extradition on Mr. Safi is that "*Travel to and facing criminal justice proceedings in Slovakia are likely to invoke some anxiety and potentially frustrations. It is difficult to predict with certainty whether this would result in a frank decompensation of this illness"* in my view this falls well short of the level of impact that would make extradition unjust or oppressive.
>
> 34. The Article 3 challenge is based on the same facts. Dr Hillman has read the Council of Europe's 2008 CPT report on health care conditions in Slovak prisons. He says "*Slovak prison healthcare is relatively understaffed in terms of medical and nursing personnel, though there is variable mental health provision depending on the institution, often through visiting psychiatrists"* Dr Hillman concludes "*as a foreign national it is therefore conceivable that a consistent and reliable supply of anti-depressant medication might not be available and that Mr Safi could risk a deterioration in depressive symptoms. This is process is difficult to predict with accuracy"*. There are two observations to make; firstly, Dr Hillman presents the risks as being at a relatively low level and perhaps somewhat hypothetically and secondly Dr. Hillman is reliant entirely on the CPT report, he is not an expert on Slovakian prison conditions. I do not find Dr Hillman's evidence goes far enough to displace the presumption that Slovakia will comply with its convention obligations. Mr Safi's challenge under Section 25/Article 3 ECHR fails. If find that Mr Safi's extraction is compatible with his Convention rights under Section 21A(1)(a) Extradition Act 2003 and having regard to the three factors in subsection (3) it would not be disproportionate; the offence is very serious, conspiracy to murder, the likely sentence is life imprisonment or a substantial determinate sentence and in view of my decision on forum there are no less coercive measures available. "

43. For the purposes of this appeal Mr Safi relies on a further psychiatric report dated 29 May 2020 from Dr Rawala, and witness statements from Mr Patman, Nazia Safi and Nicola Babb. All this evidence concerns matters arising since the extradition hearing. Dr Rawala's report is an updating report and the statements from Mr Patman and Mrs Safi provide evidence of the state of Mr Safi's mental health over recent months. Ms Babb's statement explains the restrictions imposed on remand prisoners since March 2020 by reason of the COVID-19 pandemic. Applying the *Fenyvesi* criteria, I admit all this new evidence.

44. The submission on section 25 focused on the extent of the risk that Mr Safi might attempt suicide if extradited and imprisoned in Slovakia. Dr Rawala's evidence is that Mr Safi's mental health has deteriorated since February 2020. He considers that Mr Safi's symptoms meet the conditions of ICD10 for the diagnosis of a major depressive disorder, and thus go beyond the symptoms observed by Dr Hillman (which he had considered to be consistent with a mild to moderate depressive episode). Dr Rawala also suggests as a possibility, that Mr Safi continues to experience post-traumatic symptoms consequent on the torture he was subjected to before he left Afghanistan. He notes that "depressive states are almost ubiquitous among survivors of PTSD". Dr Rawala concludes that if Mr Safi is extradited to Slovakia "there would be an increase of risk of him becoming actively suicidal"; he states "I am unable to predict with a degree of certainty regarding the risk quantification of suicide due to Mr Safi's reluctance to discuss this…"; and that "it would be prudent to consider that appropriate psychiatry services with possibility of increased observations due to risk of suicide is considered … [and it would be] … recommended that consideration is made of him having access to psychological support services with experience of working with trauma victims". Lastly Dr Rawala says this at paragraph 10.1 of his report

> "I also assessed his mental capacity and insight about his mental health, need for treatment and possible suicidal attempts. Mr Safi has mental capacity regarding his deteriorating mental health and the need to engage in psychiatry treatment. He also appears to have mental capacity regarding his thoughts of life not being worth living and suicidal attempts, he has stated that although at the time of the interview he did have an active suicidal plan as has managed to speak to his family on the phone and actively engaged in prayers in Ramadan which appears to have helped ameliorate such thoughts but he stated that he could get ruminating thoughts where he wants to end his life and these are worsened due to the lockdown restrictions and being in prison. He was not willing to disclose how he would end his life but assured me that at present he does not have an active intent. It appears that this gentleman as part of his major depressive episode could present with thoughts of life not being with living, at times these thoughts are crystallised into a more active intent to end his life when faced with significant stressors. My view is that he retains mental capacity for his actions and at the present stage the severity of his depression has not affected his mental capacity."

It is apparent that when preparing his report Dr Rawala had access to the information reported by Mr Patman in his witness statement of 13 July 2020. Mr Patman and Mr Safi have been held on remand together; they share a cell. Mr Patman explains an incident in February 2020 where Mr Safi was very distressed, and Mr Patman thought he might attempt suicide.

45. Section 25 of the 2003 Act is to be applied in the way explained by Aitkens LJ at paragraph 28 of his judgment in *Turner v Government of the United States of America* [2012] EWHC 2426 (Admin)

> "28. There have been a number of cases in which the courts have considered what has to be established … 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 … establish the following propositions: (1) the court has to form an overall judgment on the facts of the particular case … (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 … (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 … (4) The mental condition of the person must be such that it removes his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying and if that is the case there is no oppression in ordering extradition … (5) On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression … (6) Are there appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the person's mental condition and the risk of suicide … (7) There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind …"

This approach was also adopted by another Divisional Court in *Wolkowicz v Regional Court, Poland* [2013] 1 WLR 402 per Sir John Thomas P at paragraphs 8 to 9.

46. I do not consider that the evidence in this case meets the standard required for section 25 to operate as a bar to extradition. It is not Dr Rawala's evidence that Mr Safi lacks capacity to resist the impulse to commit suicide. Nor is it his evidence that if extradited there is a significant risk that Mr Safi would commit suicide regardless of the steps taken to prevent such an act. Given the evidence in this case, I am satisfied that the usual assumption that a receiving state will have arrangements in place that are appropriate to safeguarding against a risk of a suicide attempt, does hold good. The

Slovakian authorities (including those responsible for his care if he is held on remand pending trial) will be provided with information about his mental health, including the recent report from Dr Rawala.

C. Disposal

47. For these reasons both appeals are dismissed.