Neutral Citation Number: [2024] EWHC 1280 (Admin)

Case No: AC-2022-LON-001656; CO/2214/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2024

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

MARIA NIEVES HEGAZEY **Appellant**

- and –

CONCEPCION ESPEJEL JORQUERA (SPAIN) **Respondent**

- -
- -

Graeme L Hall (instructed by **Bindmans LLP**) for the **Appellant**
Catherine Brown (instructed by **Extradition Unit, Crown Prosecution Service**) for the **Respondent**

Hearing dates: 20 May 2024

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This judgment was handed down remotely at 2pm on Friday 24 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Approved Judgment

Mr Justice Saini :

This judgment is in 4 main parts as follows:

I. Overview

1. This is an appeal against the decision of District Judge Turnock ("the Judge") dated 14 June 2022 ordering the extradition of Maria Nieves Hegazey ("the Appellant") to Spain. The extradition is requested pursuant to an Arrest Warrant ("the Warrant") issued by the Central Investigative Court No.3, of Spain ("the Respondent") on 11 June 2021 and certified by the National Crime Agency on 7 July 2021. As the Appellant was arrested after 23:00 on 31 December 2020, the proceedings are governed by Part 1 of the Extradition Act 2003 ("the 2003 Act") and the Trade and Cooperation Agreement ("the TCA"). Following conclusion of oral submissions, I indicated that I would allow the Appellant's appeal. These are my reasons.

2. The Warrant seeks the surrender of the Appellant in order to execute a custodial sentence of 5 years' imprisonment. That sentence was imposed in respect of offences of forging or falsifying official and commercial documents, and misappropriating public funds, contrary to Articles 390.1, 74 and 24.2 of the Spanish Criminal Code, when the Appellant worked in the press office at the Spanish Embassy in London ("the Embassy"). The National High Court in Spain found the Appellant guilty of these offences on 19 December 2018. The Appellant did not attend the whole trial but was legally represented. The Appellant worked at the Embassy between 1995 and 2014. In her role she was an authorised signatory on bank accounts and was entitled to disburse monies from the office account. The conduct alleged was that from 2013 onwards the Appellant diverted monies from that office account for her own benefit, and she falsely noted those amounts in relevant records as expenditures. Upon conviction it was estimated that the total losses suffered to the Embassy were between €4,000 to €50,000. The actual amount in issue however remains unclear on the evidence before me. I understand that there is an ongoing challenge to the fairness of the trial and conviction before the Strasbourg Court.

3. The Appellant is a Spanish national who has lived in the UK for all her adult life. She is currently 62 years of age. The Appellant came to the UK in February 1985, when aged 19 years, to study English on a student visa. She initially settled in the UK on a spousal visa but has had indefinite leave to remain in the UK since 23 March 2021. She lives with her husband of 36 years, Sean, in Surrey. It is common ground that she has substantial ties to the community in the UK. Her two children (and their children) live in the UK. She has a large network of friends. There is no doubt on the evidence that the Appellant is a member of a close-knit family network and its closeness has been strengthened by the Spanish heritage of the Appellant.

4. In the proceedings below, the Appellant challenged her proposed extradition on a number of grounds as follows: that her extradition was barred under section 21(2) of the 2003 Act because it would be incompatible with her rights under Articles 5, 6, 7 and 8 of the ECHR; and/or that it would be unjust or oppressive to extradite her by reason of her physical and mental condition, pursuant to section 25 of the 2003 Act. As I describe below, not all of these grounds remain in issue. In particular, a major focus of the proceedings below was the fairness of the Spanish criminal trial. That matter is not pursued.

5. Although the Appellant has permission to appeal on three grounds, pursuant to the Order of Julian Knowles J dated 5 July 2023, she advances just two grounds. Ground 1 concerns Article 8 ECHR and is divided into two sub-grounds: first, it is said that the Judge failed properly to put the Appellant's mental health condition and substantial suicide risk into the balance (Ground 1a); and, second, it is said that the Judge's conclusion that Spanish prisons could adequately manage the Appellant's mental health needs did not accord with the evidence (Ground 1b). Ground 2 is that the Judge erred in her consideration of the issue raised under section 25 of the 2003 Act concerning injustice or oppression if the Appellant was extradited. That ground is principally concerned with the Appellant's accepted mental health problems. There is an overlap between the grounds because the mental health issues also feature heavily in the Appellant's Article 8 ECHR case. The complaint under Article 3 ECHR (which the Appellant had permission to pursue) has not been maintained on appeal.

New evidence

6. The parties sought to introduce on appeal evidence which was not before the Judge. For the Appellant the evidence she sought to adduce was of a number of types: broadly, updating medical evidence, additional evidence from family and friends and finally evidence about Spanish prisons and mental health provision. My rulings in relation to each category are not the same. In my judgment the updating medical evidence from Dr Deo and the Appellant's GP meets the two conditions in Hungary v Fenyvesi [2009] EWHC 231 at [32]. Not only does this evidence go to the heart of the human rights issue before me but it could not by definition have been available below. It is evidence assisting the court with the progression (or deterioration) of the Appellant's mental condition and clarifying the opinion of Dr Deo who accepted in his oral evidence before this Court that he had not been clear in answering the question he was asked to address in relation to suicide risks (see [45] further below). It would be unjust to penalise the Appellant by excluding this evidence from an independent medical professional. I gave Counsel for the Respondent permission to cross-examine Dr Deo on this late evidence. In the event that I was persuaded that the Article 8 ECHR issue needed to be reconsidered, it was agreed that I should have the most up to date and accurate evidence of the Appellant's mental health state.

7. I was however not satisfied that the additional witness statements from family and friends of the Appellant met the requirements of the first limb of Fenyvesi. This seemed to me to be essentially evidence seeking to bolster the family life aspects of the case.

8. The Respondent made an application to adduce the Spanish Government's response to the CPT 2021 Report (see [29] below). I was persuaded I should admit it having regard to the principles in FK v Stuttgart State Prosecutor's Office, Germany [2017] 2160 (Admin) at [39]-[40]. In these circumstances, the interests of justice demanded that the

Appellant should in response be permitted to put before the Court two earlier reports: the CPT's Report of 2017 and the Spanish Government's Response of 2017 to that report. Ultimately, however, given my decision in relation to Ground 1a, I did not need to address this evidence in any detail.

II. The Law

9. There was no material dispute before me as to the legal principles. I was referred to a substantial body of material, but will summarise in this section only the most relevant statutory material and case law. I will return at [27] below to the way in which the specific legal principles are relevant to the main issues in the appeal before me. I will not set out Sections 26 and 27 of the 2003 Act which set out the familiar scope of the appellate jurisdiction and the appeal court's powers.

10. Under section 21 of the 2003 Act the court is required to decide whether extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. As I have indicated above, the sole Convention right in issue in the present appeal is Article 8 ECHR concerning the right to respect for private and family life. As explained in Norris v Government of the United States of America (No. 2) [2010] UKSC 9, the test is to consider whether the consequences of the interference with these rights would be "exceptionally serious" so as to outweigh the importance of extradition. As regards the classic balancing exercise involved in the Article 8 ECHR analysis, the Divisional Court explained the appellate approach in Polish Judicial Authorities & Ors v Celinski & Ors [2015] EWHC 1274 (Admin). Determinations of fact made by the District Judge will usually be respected in their entirety: Celinski and Wiejak v Olsztyn Circuit Court of Poland [2007] EWHC 2123 (Admin) (at [23]). The High Court is concerned with whether the overall decision was wrong. This is an outcome based test.

11. Section 25 of the 2003 Act provides as follows:

> "25 Physical or mental condition
>
> (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
>
> (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
>
> (3) The judge must—
>
> a) order the person's discharge, or
>
> b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

12. Section 25 (and its Part 2 equivalent, section 91) was introduced into extradition procedure to give the court, as opposed to the Secretary of State, the duty to make the

decision in cases of ill health. The concept of extradition being "*unjust or oppressive*" has a long history in extradition law. As explained in Kakis v The Government of the Republic of Cyprus [1978] 1 WLR 772, by Lord Diplock at pages 782-783:

> "…"Unjust" I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, "oppressive" as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair…"

13. Under established principles whether there is "oppression" or "injustice" is to be determined by the nature and gravity of the conduct alleged, and the enduring public interest in extradition and prevention of safe havens: The Government of the Republic of South Africa v Dewani (No. 1) [2013] 1 W.L.R. 82 at [74]. The threshold for the demonstration of oppression was described in Mikolajczyk v Wroclaw District Court [2010] EWHC 3503 at [16] as follows:

> "It is important to understand how section 25, and allied arguments under Article 3 and Article 8, should be approached. It is not necessary for the requesting state to demonstrate that it will replicate the conditions which an appellant enjoys, either in prison in the United Kingdom or out of prison in the United Kingdom. The threshold for showing that it would be oppressive to extradite someone on account of their physical condition is necessarily a high one… It is of course possible that treatment will be less satisfactory in Poland than in the United Kingdom, but the question is whether the difference in treatment would mean that extradition was oppressive. It is for the appellant to demonstrate that that is so."

14. As to suicide risks, Wolkowicz v Regional Court in Bialystock, Poland [2013] EWHC 102, provides authoritative guidance. The Divisional Court considered a number of authorities on the risk of suicide and the correct approach for the responsible courts in this jurisdiction where there is a risk of suicide in cases involving Part 1 territories. At [8]-[9] the Court endorsed Turner v Government of the United States of America [2012] EWHC 2426 (Admin). Those principles are well known and do not need to be set out.

15. The Court in Wolkowicz also observed as [10] as follows (with my underlining):

> "…it is helpful to examine the measures in relation to three stages: (1) First, the position whilst the requested person is being held in custody in the United Kingdom is clear. As Jackson LJ observed in Mazurkiewicz v Poland [2011] EWHC 659 (Admin) at [45], a person does not escape a sentence of imprisonment in the UK simply by pointing to the high risk of suicide. The court relies on the executive branch of the state to implement measures

> to care for the prisoner under the arrangements explained in R v Qazi (Saraj) [2011] Cr App R (S) 32. (2) Second, when the requested person is being transferred to the requesting state, arrangements are made by the Serious Organised Crime Agency ("SOCA") with the authorities of the requesting state to ensure that during the transfer proper arrangements are in place to prevent suicide in appropriate cases. As Collins J helpfully mentioned in Griffin's case [2012] 1 WLR 270, para 52 steps should ordinarily be taken in such cases to ensure that no attempt is made at suicide and proper preventative measures are in place. Medical records should be sent with the requested person and delivered to those who will have custody during transfer and in subsequent detention. (3) Third, when the requested person is received by the requesting state in the custodial institution in which he is to be held, it will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary: see Krolik v Regional Court in Czestochowa, Poland (Practice Note) [2013] 1 WLR 490, paras 3– 7 and the authorities referred to and Rot's case [2010] EWHC 1820 (Admin) at [10]–[11]. In the absence of evidence to the necessary standard that calls into question the ability of the receiving state to discharge its responsibilities or a specific matter that gives cause for concern, it should not be necessary to require any assurances from requesting states within the European Union. It will therefore ordinarily be sufficient to rely on the presumption. It is therefore only in a very rare case that a requested person will be likely to establish that measures to prevent a substantial risk of suicide will not be effective."

16. Finally, my attention was drawn to Modi v Government of India [2022] EWHC 2829 (Admin) at [128] as to the practical approach to be adopted to the principles identified in Turner.

III. Ground 1: Article 8 ECHR

17. The Judge's consideration of this issue was set out between [136]-[145] of the Judgment. The Judge had earlier addressed the matter of the Appellant's mental and physical health issues and referred back to those conclusions (arrived at in relation to the other bars to extradition relied upon). In particular, the Judge had summarised the evidence and made findings in relation to suicide risks and prison conditions earlier in her judgment because those points had been argued through the Article 3 ECHR and section 25 frames of reference. Counsel for the Respondent was right to emphasise that it is important not to overlook those findings because they fed into the Judge's later analysis of the Article 8 ECHR issues which did not stand alone. As to Article 8 ECHR specifically, the Judge found that the Appellant clearly had a "very well-established family and private life in the UK" and, as such the Article 8 ECHR rights of both her and her family members were engaged in this case. However, she did not accept the

evidence about the extent of the practical difficulties that her extradition would have upon her and her family. She also found the evidence of the family members to be "exaggerated and embellished" in certain identified respects.

18. That said, the Judge began and ended her Article 8 ECHR analysis by observing that "whether or not the interference that her extradition would have on those rights is proportionate or not are very finely balanced in this case". She rightly noted the importance of the UK to be seen to be upholding its treaty obligations and the very significant sentence of five years' imprisonment imposed on the Appellant. There is no issue that the Judge identified the relevant legal test to be applied in the Article 8 ECHR balance. The Judge ultimately concluded that the Appellant's extradition would not be a disproportionate interference with the rights of the Appellant and her family.

19. The core conclusion of the Judge in relation to the Article 8 ECHR issues was set out at [143]:

> "In relation to her physical and mental health problems, and as set out above in relation to the arguments under Article 3 and section 25, I consider that the Spanish prison environment is more than capable of ensuring that the Requested Person has the medication that she requires in order to manage her physical and mental health issues. And, as discussed more fully above in this judgment, I take the view that the mental health service provision in Spanish prisons does not appear to be wholly inadequate or of such a nature and degree that it would render her extradition disproportionate".

Submissions

20. A number of wide-ranging submissions and responsive arguments were made in the focussed and well-structured written and oral submissions of Counsel for the Appellant and Counsel for the Respondent. I have considered their points but will provide only a high-level overview before turning to my own analysis and conclusions. I will decide only those issues which are strictly necessary for the disposal of the appeal.

21. Counsel for the Appellant, who did not appear below, focussed on the finding of the Judge (which I have identified above) to the effect that the arguments for and against extradition were "very finely balanced". Counsel emphasised that so fine was the balance that the Judge again said, when concluding her judgment on this point at [145], that "I find the arguments weighing both in favour and against extradition in this case are finely balanced". He relied upon two primary points which he said vitiated the Judge's conclusion that extradition would not be a disproportionate interference with the Appellant's Article 8 ECHR rights.

22. First, in relation to Ground 1a, he said that the Judge failed properly to put the Appellant's mental health condition and substantial suicide risk into the balance. Second, in relation to Ground 1b, Counsel for the Appellant argued that the Judge's conclusion that Spanish prisons could adequately manage the Appellant's mental health needs did not accord with the evidence. Before me and below, substantial reliance was placed on a 2021 report to the Spanish Government on the visit to Spain between 14 to

28 September 2020 carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT Report"). The CPT visited a number of prisons in Spain, namely Avila Women's Prison, Castellon Prison, Madrid V, Madrid VII, Seville I, Seville II, Valencia Prison, Alicante Psychiatric Hospital, Seville Penitentiary Psychiatric Hospital and "La Marchenilla" Juvenile Detention Centre. Of those prisons only two are described as prison establishments for women, namely Avila and Madrid VII. As I have recorded above, I admitted into evidence on this appeal a number of other documents in relation to prison conditions. One of the Spanish Government reports, in particular, responds to the CPT Report of 2021.

23. The overall submission of Counsel for the Appellant was that each of the sub-grounds 1a and 1b reveals a problem with the adequacy of the Judge's process of reasoning in reaching her conclusions. He argued that this required the court on appeal to re-conduct the balancing exercise.

24. In response Counsel for the Respondent argued that the Judge's analysis of the Appellant's mental health conditions and the suicide risk was not confined to the reasoning identified by Counsel for the Appellant. She forcefully submitted that the Judge was faced with three issues at the lower court in respect of which the Appellant's mental health was relevant: Article 3 ECHR, Article 8 ECHR and section 25 of the 2003 Act. My attention was drawn to the fact that the Judge set out full summaries of the evidence relating to the Appellant's mental health and her findings upon it throughout the judgment. Accordingly, it was argued that when the judgment is read fairly, and as a whole, it is clear that the Judge plainly considered the Appellant's mental health conditions and the risk of suicide appropriately and thoroughly.

25. As to Ground 1b, Counsel for the Respondent submitted that the Judge afforded "proper scrutiny" to the evidence before her. In her written submissions Counsel for the Respondent referred me to the sections of the judgment dealing with the CPT Report, the Spanish Ombudsman's Report, the Appellant's submissions on her mental health, the Respondent's submissions and the evidence within the Article 3 ECHR context and Article 8 ECHR context. It was argued that the Appellant's arguments were in particular respects not a fair summary of the evidence below, particularly in relation to the CPT's Report and findings. I was also reminded of the presumptions that appropriate medical treatment will be provided by an EU country such as Spain.

26. As to the personal factors affecting the Appellant, Counsel for the Respondent submitted that the matters relied upon both individually and cumulatively by the Appellant before the Judge were insufficient to render extradition to be a disproportionate interference with her or her family's Article 8 ECHR rights in the circumstances of this case. It was said that the Judge carefully analysed the evidence before her, that there was fair and reasoned analysis, and there are no identifiable errors in law or fact.

Analysis

27. I begin by identifying a number of matters which have guided me in my approach to this ground of appeal. First, I give weight to the fact that the judgment itself is a detailed and impressive 48 page document which makes extensive reference to the facts. It contains findings of fact which I should, absent clear and obvious errors, respect on

appeal. It is also fair to record that the majority of the judgment deals with issues which have not been argued before me and where it is not suggested the Judge was in error in rejecting the Appellant's arguments. As often happens on appeals, the arguments before me have focussed on issues which appear to have been raised more as subsidiary points and the Judge will naturally have spent less time in her judgment dealing with those issues than the main arguments. Second, a judgment needs to be considered as a whole. A judge cannot be expected to repeat reasoning found elsewhere in a judgment. Third, a judge is not expected to refer to every factual matter raised before them and can be expected to have taken into account evidence before them even if items of evidence are not individually identified. However, a fact-finding tribunal is expected to grapple with the principal facts and principal arguments made before it. That this has been done can only be identified if the tribunal has shown by its reasons that it has confronted and dealt with the principal issues. Fourth, in any Article 8 ECHR challenge, like the judge below, I must give real weight to the public interest in the United Kingdom complying with its extradition obligations, and in the prevention, detection and punishment of crime. The Appellant was convicted of a serious offence which related to a substantial fraud. She received a significant prison sentence. There is a powerful public interest in favour of extradition in such cases for the reasons explained in a number of authorities. Fifth, my task on appeal is to stand back and consider whether the overall decision on Article 8 ECHR was wrong which in this case means that it should have been decided differently - what I have described as an outcome based test. Sixth, a decision cannot within the appellate system I am concerned with, be classified as wrong simply because an appeal judge may have settled the balance differently when a proportionality assessment is made. There is room for reasonable and lawful disagreement on how to strike a balance. The balance is classically a matter for the tribunal of fact and even errors and omissions do not of themselves show that a proportionality decision is wrong. Seventh, however, if the conclusion reached by such a tribunal does not follow as a matter of logic from the factual material before it, or reveals a fundamental error of approach, an appellate court can and must reconsider the matter. I turn to Ground 1a and will begin by limiting myself to the evidence before the Judge below.

28. It was common ground that mental health considerations, including the significant risk of deterioration posed by extradition, may (depending on the medical evidence) offer a powerful basis to conclude that extradition would be disproportionate. This is a point of different and freestanding relevance to the similar issues which arise in relation to section 25 of the 2003 Act. I note that in Dabrowski v Poland [2017] EWHC 179 (Admin) the appellant's extradition was sought for the prosecution of a violent street robbery in which the victim was knocked unconscious. In allowing the appeal under Article 8 ECHR, Treacy LJ noted at [43] that the requested person was currently stable, and that his stability would be "*jeopardised by extradition*". Treacy LJ continued at [46] to note that "*Whilst it is to be hoped that arrangements would be made in Poland to avoid a relapse into very serious mental illness for this appellant, it cannot be gainsaid that return would involve a significant degree of risk of that occurring as well as considerable stress and hardship for this appellant.*"

29. I turn to the evidence on the Appellant's mental health before the Judge. The Appellant relied principally upon the evidence of Dr Deo, consultant forensic psychiatrist. As the Judge noted at [38], Dr Deo's report was "admitted as agreed evidence before the court". The key points in Dr Deo's evidence as accepted by the Judge were:

(1) Extradition would "*certainly*" result in a deterioration of her mental state and that her "*anxiety and depression would worsen significantly*".
(2) In the event of extradition, the Appellant would necessarily need "*the provision of proper mental health support … including [round] the clock observation as 'her increased risk of suicidality would be substantial*".
(3) If extradited, Dr Deo was concerned that "*her depression would become so severe that there would be a substantial risk of suicide, driven by that severe depression*".
(4) The absence of appropriate care "*would increase further her risk of an ongoing deteriorating mental state and risk of completing suicide*".

30. When it came to the Article 8 ECHR balancing exercise, the Judge's reasoning was as follows:

> "**135. Factors said to be in Favour of <u>Refusing Extradition</u> …**
>
> (v) The Requested Person suffers from poor physical and mental health, both of which have been worsened as a result of these extradition proceedings. Extradition would likely result in a further deterioration to her mental and physical health. …
>
> **ARTICLE 8 FINDINGS AND RULING …**
>
> 138. On the other hand, the Requested Person clearly has a strong connection with the UK. She has been in the UK almost her entire adult life and the offences themselves were committed whilst she was working as locally engaged staff at the Spanish Embassy in the UK. There is no doubt that her extradition would have a very significant emotional impact on her family and that it would lead to a worsening in her physical and mental health."

31. Even allowing for the deference which an appellate court must give to a first instance fact finding tribunal, in my judgment there is real force in the complaint that the Judge erred by underplaying the effects of extradition on a person in the Appellant's position. The Appellant has, it was accepted, very significant mental health problems. There was also clear evidence of inevitable deterioration that extradition would cause, and of her real risk of suicide. Even giving weight to the Respondent's submissions that the Judge in many respects dealt with these issues under Article 3 ECHR and section 25, I consider these points needed to be grappled with more directly and in more detail than was done by the Judge in her Article 8 ECHR balance and analysis. I have not overlooked that the Judge considered this evidence under the section 25 challenge where she concluded at [123] that there was insufficient evidence to demonstrate that the Appellant "*will commit suicide*". But, Counsel for the Appellant was right to submit that involves the application of a higher test than one of proportionality: cf. in the passage of time context, <u>Konecny v Czech Republic</u> [2019] I WLR 1586 at [57] per Lord Lloyd Jones: "the threshold test to be satisfied would not be one of injustice or oppression but the lower one of disproportionality".

32. In my judgment, the Judge did not properly put into the Article 8 ECHR analysis the Appellant's significant mental health problems, the significant deterioration extradition posed to her health, and the associated substantial risk of suicide. On the Judge's own

factual conclusions, this was what can fairly be described as a "knife-edge" case. Where there is a real risk of suicide and mental health deterioration, this omission was a material deficiency in the adequacy of the Judge's process of reasoning. It is an error of approach which requires this Court's intervention.

33. In my judgment, this flaw undermines the Article 8 ECHR conclusions. Ground 1b does not arise but I will briefly indicate why, without expressing any final conclusions, there appeared to me to be merit in the Appellant's complaint.

34. Ground 1b concerns the Judge's conclusion that Spanish prisons could adequately manage the Appellant's mental health needs. The Judge at [143] concluded that:

> "In relation to her physical and mental health problems, and as set out above in relation to the arguments under Article 3 and section 25, I consider that the Spanish prison environment is more than capable of ensuring that the Requested Person has the medication that she requires in order to manage her physical and mental health issues. And, as discussed more fully above in this judgment, I take the view that the mental health service provision in Spanish prisons does not appear to be wholly inadequate or of such a nature and degree that it would render her extradition disproportionate."
>
> (Emphasis added).

35. I agree with Counsel for the Appellant that the Judge appears to have asked herself the wrong question. The question ought to have been whether mental health care in Spanish prisons "is adequate" to meet the Appellant's needs and not whether it "appeared" "not" to be "wholly inadequate". With respect to the Judge, this rather confusing language might suggest an implicit acknowledgement that the care is not adequate. I also consider there to be force in his submission that the Judge's conclusion is difficult to reconcile with the evidence below. That evidence was addressed at length before me in written submissions and also addressed orally. I will outline why the Judge's conclusions might be open to question.

36. I begin with the evidence on the Appellant's medical treatment needs. In his original and unchallenged report, Dr Deo concluded that the Appellant would require "*proper mental health support*" including "*round the clock observation*" ("*24 hour observations*" akin to "*suicide watch*" on first arrival) with continued monitoring "*via a suitably qualified mental health team*". The Judge accepted this evidence at [124] where she recorded: "*he advises that she take antidepressant medication treatment daily and that she receive further psychological input to support her with stress and anxiety*". The Appellant relied on the most recent CPT Report in this regard. The Judge summarised this evidence at [40]-[43]. The Judge noted at [40], the CPT inspected a number of prisons, two of which were for women – Avila and Madrid VII. As the Judge further noted at [42], the Appellant, as a "*newly-arrived*" prisoner, will likely first be sent to Madrid V. I bear in mind the point made by Counsel for the Respondent that the CPT Report did not cover every institution in Spain. It did however cover two women's prisons and one where the Appellant was likely to be sent.

37. The evidential position which appeared to emerge from the evidence below can be summarised as follows:

(1) Psychiatrists. CPT Report at [99] "*The CPT's delegation found once again that access to psychiatric care for prisoners remained inadequate at the establishments visited*". As I read the Report, that statement relates to all the prisons visited (including the women's prisons). More specifically, at Madrid V only two psychiatrists were present for two to six hours per month; at Madrid VII, only one psychiatrist was present three times per month. The Prison Administration does not itself employ psychiatrists but works with other agencies in provision. The CPT concluded that "*It is clear that this model is not functioning properly and that prisoners with a mental illness are not receiving the treatment they require*".

(2) Psychologists. The CPT Report at [99] concluded that apart from one prison, "*there was no clinical psychologist … providing assistance to inmates with a mental disorder*". I note that while the Spanish government had asserted in its response to the 2016 CPT report that "*all prison establishments have psychologists … to intervene from the perspective of clinical psychology*", the CPT concluded that "*the reality in the prisons visited is that such interventions were not taking place for mentally ill patients*".

(3) Self-harm and suicide. There appears to be no policy on preventing or reducing self-harm or suicide for women prisoners: The CPT Report at [134] found that there is an "*urgent need*" for the authorities to put into "*practice a policy on preventing and reducing instances of self-harm*" for women prisoners that operates "*from a therapeutic standpoint and not a punitive one*". The approach of prison staff is to punish instances of women self-harming and attempting suicide: The CPT Report concluded at [134] that in Madrid VII and other women's prisons (except Avila) "*many prison officers viewed the high prevalence of self-harming by women prisoners as merely an attempt to attract attention and considered that it ought to be dealt with severely to prevent future occurrences*". The CPT urged that staff should be provided with "*specific training*" (again indicating that there is none) on the need to identify women at risk of self-harm or attempting suicide "*with an emphasis on de-escalation and rapport building rather than restraint and isolation*". The CPT condemns the practice of fellow prisoners observing women prisoners at risk of self-harm or attempted suicide: The CPT Report at [135] concludes that prisoners should not observe prisoners at risk of self-harm or suicide. The Executive Summary states: "*prisoners should no longer be tasked to act as permanent observers of other women prisoners at risk of committing an act of self-harm or suicide*".

38. Counsel for the Respondent made a powerful overarching submission that the criticisms made on behalf of the Appellant about mental health care in Spanish prisons were overstated. Having considered the CPT Report together with the additional material submitted by the parties, I consider there appear to be genuine and evidenced concerns about the standard and nature of mental health provision. I do not consider the Judge's reasoning does justice to the evidence. I underline however that I make no finding that these concerns are sufficient to rebut the presumption of adequacy of provision in an EU/Council of Europe State which one would normally adopt.

39. I note that below, the Respondent did not respond to the CPT Report with evidence, despite the Appellant repeatedly requesting the Respondent to provide evidence as to the conditions of detention in which she would be held. For completeness, I have considered the parts of the Spanish Government's response (9 November 2021) to the CPT Report drawn to my attention by Counsel for the Respondent. Again, without expressing any final conclusions, it is fair to say that the response shows progress but not in my judgment sufficient progress that one can say the CPT's concerns have been addressed. Standing back, it appears to be that a person facing the Appellant's particular mental health challenges, and with her suicide risk, could well face substantial difficulties in the Spanish prison environment. Regrettably, many of the concerns the CPT expressed are similar to those the courts in England and Wales are familiar with in relation to the nature and quality of mental health provision in our own prisons, particularly prisons for women.

Reconsideration of the Article 8 ECHR balance

40. Given that I have allowed the appeal on Ground 1a, I will reconduct the balancing exercise afresh, on the evidence below as supplemented by the most recent medical evidence. Both Counsel addressed me on this issue at the hearing.

41. As a preliminary point, I should note that Counsel for the Appellant invited me to find that the evidence demonstrated that Spanish prisons are not able to provide an adequate level of mental health care. He argued this was a major factor against extraditing the Appellant. I accept that there are evidenced concerns about the level of care, as I have summarised above. However, even absent this factor the balance in this case comes down in favour of the Appellant for the reasons I set out below. Accordingly, I do not need to make any finding as to whether the level of care provided in Spanish prisons to women with mental health difficulties is deficient.

42. I start with the Judge's own conclusion that this is a "finely balanced" case where the Judge had in her own words found on the facts that the Appellant had a "very well-established family and private life in the UK". However, when the significant adverse impact on the Appellant's mental health and associated substantial suicide risk, and the additional matters I identify below, are put into the balance, this goes in my judgment from being a finely balanced case to one where the factors in favour of discharge outweigh the factors in favour of extradition. None of the five factors I refer to below is alone conclusive but they all point in a particular direction.

43. First, the evidence from Dr Deo, accepted by the Judge at [38], is that extradition will have a considerably adverse impact on the Appellant's mental health such that her anxiety and depression would "*worsen significantly*", there would be a "*substantial risk of suicide*", and that the suicide risk would be "*driven by that severe depressive episode*". Dr Deo's updating second (20 September 2022) and third (26 December 2023) reports are consistent with this evidence:

    a) The second report speaks at [7.5] and [7.8] of a "*substantial suicide risk*" and "*high risk*" of making a suicide attempt. Further, at [7.10] that the severe depressive episode she would suffer if extradited would mean that she "*lacks the capacity to resist the impulse to commit suicide*".

b) The third report concludes that the Appellant continues to suffer with moderate depression: [7.7]. If extradited, this would become a severe depressive episode: [7.10]. Her suicide risk remains "*high*": [7.11]. The severe depressive episode means that "*there would be a high chance that she would lack the capacity to resist the impulse to commit suicide*": [7.13]

44. Dr Deo concluded in his first report at that if extradited the Appellant would require medication, psychological intervention and round the clock supervision (akin to a suicide watch) "*via a suitably qualified mental health team*". This is repeated in his later reports. So, in his third report, Dr Deo stated that the Appellant would need "*round the clock or 24/7 observations by trained staff due to her suicide risk*", and that she would also need medication and counselling. In his most recent report from last week, Dr Deo's conclusions were expressed as follows:

> "It has always been my view that the Appellant would be more likely than not to develop a severe depressive episode and lose the capacity to resist the impulse to commit suicide in that context. I accept that this is not more clearly stated in my first report. My second and third reports produced are consistent with my initial concerns and offer clarification of the nature of those concerns. I reiterate my view which I have held from the beginning that, if extradited, she will more likely than not suffer with severe depression and that, should she become severely depressed, it is more likely than not that this will lead to an inability for her to resist the impulse to commit an act of attempted suicide. It is my view that if she were not severely depressed she would not take steps to commit suicide".

45. Counsel for the Respondent did not challenge any of Dr Deo's original or updated opinions but sought some clarification of his evidence in cross-examination. Dr Deo accepted in his oral evidence that he had not directly addressed below the matter which he had clarified in his most recent report (the Appellant's inability to resist the impulse to commit an act of attempted suicide). Dr Deo was an impressive witness. He has substantial experience of working with prisons (and within prisons) in relation to mental health needs of prisoners. He explained that in his view, the Appellant would require immediate mental health provision if she was transferred into a custodial setting. This would include not only observation by trained prison staff but also mental health nursing assistance. He was wisely not willing to be drawn into predicting how the Appellant's mental health would progress - he rightly said that such predictions are notoriously difficult. Dr Deo did however explain that the Appellant's mental health was on a downward trajectory with depressive symptoms likely to significantly increase on extradition. He expressed real concerns for the Appellant's wellbeing.

46. Second, while far from trivial in the calendar of offending, the charges on which the Appellant was convicted are not the most serious. In particular, this is a financial offence, and not one involving violence or drugs. As the Strasbourg Court explained in Unuane v UK (App No 80343/17), 24 November 2020:

> "87. That being said, the Court has tended to consider the seriousness of a crime in the context of the balancing exercise under Article 8 of the Convention not merely by reference to the length of the sentence imposed but rather by reference to the nature and circumstances of the particular criminal offence or offences committed by the applicant in question and their impact on society as a whole. In that context, the Court has consistently treated crimes of violence and drug-related offences as being at the most serious end of the criminal spectrum …".

47. The court gave this factor some weight in Lysiak v Poland [2015] EWHC 3098 at [42] where the economic nature of the offending was taken into account in allowing an Article 8 ECHR appeal for a fugitive to serve an outstanding sentence of 18 months' imprisonment for a fraud in the sum of £130,000.

48. Third, I have had regard to the fact that the Judge concluded that the amount misappropriated according to the National High Court was just under £20,000. At other stages in the Spanish legal process the amount was identified as around £60,000. Caution must be exercised when making comparisons of our sentencing regimes with those of other states in conviction warrants: see Celinski at [13(iii)] by reference to HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25 at [132]. In the present appeal, the Article 8 ECHR rights of the Appellant's family including her husband, children and grandchildren, make this one of the rare cases in which I should consider whether the offence would have attracted a suspended sentence as opposed to immediate custody. The Sentencing Council's *Theft Guideline*, even assuming culpability category A (high culpability) and harm category 2 (£10,000 to £100,000) - would have a Starting Point "SP") of 2 years' custody. This falls within suspended sentence territory even before adjusting the SP due to the lesser sum involved, and the considerable mitigation in this case. Where a suspended sentence would likely be imposed in this jurisdiction, especially due to well-evidenced mental health needs, this is a relevant factor (albeit of limited weight) in the balance when the case is a close one.

49. Fourth, the Appellant could have been prosecuted here for the offending. Indeed, I note that the Judge concluded at [144] that "I accept that it may have been preferable to have tried this case in the UK". The possibility of "prosecution here" is a factor in the balancing exercise: HH at [83]. As Lord Phillips stated in Norris at [67] "Unless the judge reaches the conclusion that the scales are finely balanced he should not enter into an inquiry as to the possibility of prosecution in this country". As I have noted above, in the present case the Judge found this to be a "very finely balanced" case, and the possibility – preferability, even – of prosecution is a factor.

50. Fifth, the Appellant would find it very difficult to return here once she has served her prison sentence. The consequences of extradition would be harsh. That was rightly not challenged by Counsel for the Respondent. The Appellant's inability to return to the UK (her home since 1985) to live with her husband, children and grandchildren is a factor against extradition. What has been called "Brexit uncertainty" is relevant to the anxiety that the Appellant and her family face, as well as the "objective substantial risk" that she may never be reunited with her family: Anotchi v Germany [2020] EWHC

3091 (Admin) at [51]. These considerations apply with equal force to conviction cases: Rybak v Poland [2021] EWHC 712 (Admin) at [34]-[36].

51. Sixth, the Appellant is not a fugitive, and the obligation to ensure that the UK is not a safe-haven for fugitives is not engaged. Further, the offending is now over a decade old.

52. None of these factors has an overriding weight but when put together and then balanced against the strong public interest in adhering to extradition treaty obligations, there is only one answer. In my judgment extradition of the Appellant will amount to a disproportionate interference with the Appellant's Article 8 ECHR rights and those of her family network.

IV. Conclusion

53. The Appellant's success on Ground 1a is sufficient for me to allow the appeal pursuant to section 27(3) of the 2003 Act. I direct Ms Hegazey's discharge and I quash the order for extradition pursuant to section 27(5) of the 2003 Act.