



Neutral Citation Number: [2019] EWHC 504 (Admin)

Case No: CO/3734/2018

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 07/03/2019

**Before :**

**MR JUSTICE JULIAN KNOWLES**

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**Between:**

- (1) **ARMINAS BARTULIS**  
(2) **DOMANTAS DAUKSAS**  
(3) **KASTYTIS KMITAS**  
(4) **ANDRIUS OSTAPEC**

**Appellants**

**- and -**

- (1) **PANEVEZYS REGIONAL COURT,  
LITHUANIA**  
(2) **PROSECUTOR GENERAL'S OFFICE,  
LITHUANIA**

**Respondents**

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**Malcolm Hawkes** (instructed by **Oracle Solicitors**) for the **First Appellant**  
**Florence Iveson** (instructed by **Oracle Solicitors**) for the **Second and Fourth Appellants**  
**Saoirse Townshend** (instructed by **Oracle Solicitors**) for the **Third Appellant**  
**Hannah Hinton** (instructed by the **Crown Prosecution Service**) for the **Respondents**

Hearing dates: **20 February 2019**

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**Approved Judgment**

## **The Honourable Mr Justice Julian Knowles:**

### **Introduction**

1. These are renewed applications for permission to appeal against the orders for extradition made in respect of each of the Appellants by District Judge Jabbitt on 17 September 2018. The cases were joined at first instance by the district judge and were heard at a conjoined hearing which took place on 4, 5 and 26 July 2018. The cases as presented before the district judge principally concerned the common issue of whether there are substantial grounds to believe that detention in Lithuania, either on remand or following conviction, entails a real risk of a breach of Article 3 of the European Convention on Human Rights (Article 3/the Convention) and thus whether extradition is barred by ss 21 or 21A of the Extradition Act 2003 (the EA 2003).
2. Supperstone J refused permission to appeal on the papers to all Appellants on all grounds on 21 December 2018.
3. It is unnecessary for the purposes of this renewed permission application to go into the details of the offences contained in the European arrest warrants in respect of each of the Appellants. Suffice it to say that between them they are sought for the purposes of trial and also to serve sentences of imprisonment.

### **The case before the district judge**

4. The case that was advanced on behalf of the Appellants (and two other defendants, whose cases are not before me) was, in summary, as follows:
  - a. There is a real risk that their rights under Article 3 of the ECHR will be violated because of prison conditions in Lithuania on remand. There is an international consensus that prison conditions in some remand prisons in Lithuania, including Lukiskes Prison, are such that there is a real risk of an Article 3 violation: see *Jane v Prosecutor's General Office, Lithuania* [2018] EWHC 1122 (Admin), [30]. They submitted that the assurance that was given in *Jane v Prosecutor's General Office, Lithuania (No 2)* [2018] EWHC 2691 (Admin), to the effect that persons surrendered under an accusation warrant will be held at Kaunas Remand Prison (which is agreed to be Article 3 compliant), Lukiskes Prison, or Siauliai Prison in no less than 3m<sup>2</sup>; persons surrendered under a conviction warrant that may spend a maximum period of 10 days at a remand prison would be housed in cells with no less than 3m<sup>2</sup> of space; all persons held at Lukiskes Prison or Siauliai Prison will only be held in refurbished or renovated parts of the prison in compliance with Article 3 of the European Convention on Human Rights, notwithstanding its acceptance by the Court in *Jane (No 2)* was not sufficient. An identical assurance dated 7 August 2018 has been given in their cases (see the judgment of the district judge at p40) (the August assurance).
  - b. The conditions in post-conviction prisons in Lithuania (known as 'Correction Houses') fail to satisfy Article 3 of the Convention.
5. Mr Bartulis, the first Appellant, gave evidence before the district judge that there was a 'caste system' in prisons in Lithuania where prisoners perceived to be in a lower caste

were beaten and ill-treated, and he said he had been beaten. He also said that he had self-harmed. He also said that whilst in prison he had completed a construction course.

6. I was told by counsel that in cross-examination there was no challenge to this evidence. That said, Ms Hinton has made clear the Respondent does not accept the truth of this evidence.
7. In his findings of fact at [175] the judge said that he accepted that the caste system did exist in Lithuanian prisons, and that conditions were poor, however he said that Mr Bartulis had completed a course in prison. The judge made no positive finding that Mr Bartulis had been beaten, or that he had self-harmed, as he claimed. Nor, it is fair to say, did the judge say that he rejected this evidence.
8. Mr Bartulis did not raise s 25 of the Extradition Act 2003 as a bar to extradition. That section enables a judge to discharge a defendant, or adjourn the extradition proceedings, where the physical or mental condition of the defendant is such that it would be unjust or oppressive to extradite him. Mr Bartulis did not call any medical evidence.
9. The district judge rejected the Appellants' case and ordered their extradition. As I have said, Supperstone J rejected their applications for permission to appeal.

#### **Grounds of appeal and issues on this application for permission**

10. The Appellants' grounds of appeal and the issues to be decided on these applications have been helpfully crystallised in a note from Ms Hinton for the Respondents as follows:
  - a. Issue 1: whether it is arguable that the district judge was wrong to hold that the August assurance was adequate to dispel the presumed systemic risk of a violation of Article 3 in the two remand prisons, Lukiskes Prison and Siauliai Prison.
  - b. Issue 2: that the district judge should at a minimum have made *Aranyosi* inquiries concerning Correction Houses. Since the grounds of appeal were lodged in these cases, the High Court has granted permission to appeal on the issue of whether Correction Houses comply with Article 3 in *Kalinauskas v Lithuanian Issuing Judicial Authority*, CO/3858/2017, and the Appellants therefore submit that I should grant permission on this ground and order this case be joined with *Kalinauskas* and heard together. The Respondent did not resist the application for permission to appeal on this ground of appeal.
  - c. Issue 3: on 15 January 2019 an application was made to amend the grounds of appeal to include a ground that the Lithuanian Prosecutor General's office is not a 'judicial authority' for the purposes of s 2(2) of the Extradition Act 2003 and the EAW Framework Decision. A Divisional Court heard a 'rolled up' application for permission to appeal on this ground 5 February 2019 in *Krupeckiene v Lithuanian Public Prosecutor*, CO/4544/2017, and all parties invited me to stay this issue pending its determination in that case.
  - d. Issue 4: An application to introduce as fresh evidence two reports from Dr Gintautas Sakalauskas dated 17 October 2018 and 5 November 2018. These are said to be

relevant to prison conditions generally and, so far as one of the reports is concerned, conditions in Siauliai Prison in particular.

- e. Issue 5: An application to rely on material found in Internet searches by the Appellants' solicitor.
- f. Issue 6: an application to raise s 25 as a further ground of appeal in relation to Mr Bartulis.
- g. Issue 7: an application to rely on the expert psychiatric report of Dr Andrew Forrester in support of Mr Bartulis' s 25 ground of appeal.

## Discussion

11. I grant permission to appeal on the ground of appeal that there is a real risk of a violation of Article 3 because Correction Houses in Lithuania do not comply with that Article. I order that this case should be joined with *Kalinauskas v Lithuanian Issuing Judicial Authority*, CO/3858/2017 and that the appeals be heard together.
12. I stay the appeals in relation to the issue whether the Lithuanian Prosecutor General's office is a 'judicial authority' for the purposes of s 2(2) of the Extradition Act 2003 and the EAW Framework Decision pending the outcome of the decision in *Krupeckiene v Lithuanian Public Prosecutor*, CO/4544/2017. In the event that:
  - a. The Court holds that the Lithuanian Prosecutor General's Office is not a judicial authority for these purposes, I order that within seven days of judgment being handed down in that case the Appellants and the Respondent are to file written submissions on the impact of the decision on these appeals, and the applications for permission should be re-listed thereafter.
  - b. The Court holds that the Lithuanian Prosecutor General's Office is such an authority, or otherwise dismisses the application/appeal, within seven days of judgment being handed down the Appellants are to file written submissions with the Court and serve them on the Crown Prosecution Service either withdrawing this ground of appeal or explaining on what basis it is maintained.
13. I refuse permission in relation to remand prisons and Article 3 (Issue 1). I also refuse permission to rely on the 5 November 2018 report of Dr Sakalauskas which is said to go to this issue (Issue 4). That is because in light of the decision in *Jane (No 2)* upholding a similar assurance to the August assurance I am not satisfied that it is arguable that the August assurance is not sufficient to rebut the presumption of an Article 3 breach in Lithuanian remand prisons. There is nothing in Dr Sakalauskas report – which at its highest is to the effect that any renovations at Siauliai Remand Prison have been fairly minor or cosmetic, and thus that the promise to hold the Appellants in those renovated or refurbished parts is worth little – is not arguably capable of undermining the August assurance.
14. So far as Dr Sakalauskas' 17 October 2018 report is concerned, I accept Ms Hinton's submission that he is not an expert for the purposes of giving evidence on prison conditions in Lithuania. This was also the view of Supperstone J. Dr Sakalauskas has limited knowledge or direct first-hand experience of Lithuanian prisons. However, his

report is useful as a means of identifying relevant material bearing on the question whether Lithuanian Correction Houses comply with Article 3. The parties are to agree a list of the documents referred to by him that should be provided to the Court at the hearing and a joint agreed bundle should be prepared. I give leave for his report to be relied upon as a means of identifying that material. I refuse leave to rely on any opinions which he gives and those paragraphs should be ‘blue-pencilled’. This approach is in accordance with *Brazuks v Prosecutor General’s Office, Republic of Latvia* [2014] EWHC 1021 (Admin), [42].

15. I give leave to rely on items 15, 17, 18, 19, 20, 21 and 22 on the ‘Index to Supplemental Bundle for Hearing on 20 February 2019’ (Issue 5).
16. That leaves Issues 6 and 7, namely whether Mr Bartulis should be given leave at this stage to raise s 25 as a bar to extradition and to rely upon Dr Forrester’s report. I begin by observing that there was no proper explanation in the papers as initially presented why this issue was only being raised on appeal for the first time. There should have been an explanation. There is now a witness statement from Mr Bartulis’ solicitor asserting that although Mr Bartulis gave some instructions about violence in prison, he only disclosed other matters as the case progressed.
17. Dr Forrester’s evidence is that Mr Bartulis suffers from PTSD as a consequence of the abuse he said that he received in prison. Equally, Dr Forrester makes clear that the facts on which his opinion is based comes almost entirely from Mr Bartulis (see section 8 of his report). Dr Forrester also concludes that he is suffering from depression. He also says that it is unlikely that Mr Bartulis’ mental health conditions could be treated in prison in Lithuania because ‘the original physical and psychological traumas that lie behind these conditions were experienced in the same environmental context’ [12.9].
18. In the present case, Mr Bartulis’ evidence before the district judge about the caste system was relied on in connection with Article 3, and s 25 was not raised. As I observed during argument, there is a growing tendency in extradition cases for limited evidence to be given in relation to one bar before the district judge (eg in relation to Article 8), and for the same evidence then to be relied upon (perhaps with additional evidence) on appeal in relation to a different bar, which was not raised at first instance. The potential for this practice to amount to an abuse of process is obvious. It is the duty of extradition defendants to advance their whole case before the district judge and not to ‘hold back’ potential bars for an appeal in the event that extradition is ordered.
19. I consider the right course to take is to give leave for Mr Bartulis to amend his grounds of appeal to include the s 25 bar and leave it to the Court hearing the appeal to decide, having considered Dr Forrester’s report and the circumstances by which this bar came to be raised for the first time on appeal, whether to receive it and whether to grant permission to appeal.

## **Representation**

20. I extend the existing representation orders to cover the instruction of a single Queen’s Counsel to represent all of the Appellants on the appeal.

## **Order**

21. I invite counsel to draw up an agreed order reflecting this judgment.