



Neutral Citation Number: [2021] EWHC 1015 (Admin)

Case No: CO/3537/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22nd April 2021

Before :

MR JUSTICE FORDHAM

Between :

VAIDAS GUZIKAUSKAS
- and -
PROSECUTOR GENERAL'S OFFICE
(LITHUANIA)

Appellant

Respondent

The **Appellant** in person
Hannah Hinton on behalf of the **Respondent**

Hearing date: 22.4.21

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is aged 35 and is wanted for extradition to Lithuania. That is in conjunction with an accusation European Arrest Warrant (EAW). It was issued on 20 September 2019, it was certified on 10 December 2019. The Appellant was arrested on 18 January 2020. DJ Goozee ordered extradition on 25 September 2020. That was after an oral hearing on 18 and 19 August 2020. Three cases were heard together. They all raised the same general Article 3 ECHR issue, about prison conditions assurances. One appellant (Mr Civilka) also raised a distinct issue under Article 3. The Appellant had raised a distinct issue under Article 8 ECHR. Murray J refused permission to appeal in all three cases on 14 January 2021. Mr Civilka (CO/3542/2020) has renewed his application for permission to appeal on his distinct Article 3 issue. The Appellant has renewed his application for permission to appeal on the general Article 3 issue and his Article 8 issue. On 17 March 2021 Eady J directed that the Civilka case and this case be listed for separate hearings, but dealt with by the same judge. I am dealing separately with the Civilka case later today.

Mode of hearing

2. This case was listed in open court at the Royal Courts of Justice. The Appellant appeared in person from prison by video link (CVP). He had a Lithuanian interpreter who has been very helpful to us all. His previous representatives came off the record by order dated 2 March 2021. He told me he was finding it difficult to explain in circumstances where he was not now represented. He addressed me clearly and courteously. He was able to explain to me his concerns and his current situation. I was able to ask him questions particularly about contact with his son. Ms Hinton appeared on the screen in what was a hybrid hearing. I am satisfied that the mode of hearing was justified and that it secured the interests of justice and open justice.

Article 3

3. The Appellant has explained to me this morning that 1 of the reasons why he does not consent to extradition is because the prison conditions in Lithuania are very poor. He emphasises that they cannot guarantee living conditions as are guaranteed here in the UK. He has also explained the position in relation to communication with his son. That is an important point but it is part of the Article 8 issue. I am going to come back to that when I deal with Article 8. The general Article 3 point was advanced in Perfected Grounds of Appeal dated 15 October 2020, written by the three Counsel then appearing for the three appellants, including the Appellant. It contained a clear, comprehensive and sustained attack on the Article 3 compatibility of extradition viewed in terms of prison conditions. It describes as the “central issue” whether this Court “should continue to accept the Lithuanian assurances which were accepted in previous cases”. The previous cases it listed are: Gerulskis [2020] EWHC 1645 (Admin), Bartulis [2019] EWHC 3504 (Admin) and Jane [2018] EWHC 1122 and 2691 (Admin). What is argued is that acceptance of assurances requires the District Judge and this Court to conduct a ‘fresh factual assessment’ on ‘all the evidence’. Taken to its logical conclusion, the contentions made – that conclusions by this Court as to the adequacy of assurances are “relevant” and “assist” but not as “adjudicated

facts” – would mean that identical objections about the adequacy of assurances could be run and rerun, again and again, over the same ground. That would undermine the overriding objective and the special objective, it is not necessitated by the interests of justice, and is contrary to the public interest. It would also make a nonsense of the practice of adjourning cases behind test cases, where generally-applicable concerns about adequacy of assurances arise. This point is reinforced by the fact that on 20 May 2021 a Divisional Court is, I understand it, due to hear linked cases Bernotas CO/393/2020 and Simkus CO/2083/2020, where such a general concern has been identified as to the adequacy of the latest Lithuanian prison condition assurances (dated 3 April 2020), but in the context specifically and only of conviction EAWs. The present case concerns an accusation EAW where no such concern has been identified. Having said that, questions of application do of course arise, as do questions in relation to any distinguishing features. In this case the District Judge did consider, and address, all the material. His assessment is unimpeachable. A skeleton argument by Ms Hinton dated 27 October 2020 convincingly answers each point raised in the Perfected Grounds of Appeal, as to: (i) allocation; (ii) a 2019 ombudsman report; (iii) systemic issues; (iv) Northern Irish materials; (v) the pandemic; (vi) further information (28 May 2020); (vii) evidence from Karolis Liutkevicius; and (viii) the decision in Gerulskis. There is no realistic prospect of this appeal succeeding on the the Article 3 general issue.

Article 8

4. The Article 8 ground was set out by Counsel in the Perfected Grounds of Appeal. Based on that document the essence of the challenge as I see it was as follows. The alleged index offence, to which the EAW relates, is an attempt to receive into prison a small amount of heroin (0.086 grams) which can be inferred to have been ‘for personal use’. The Appellant had already served some 10 months of qualifying remand as at October 2020 , which I now update because it would make it some 16 months as at today. The District Judge was arguably wrong to find that the Appellant left Lithuania as a fugitive in these circumstances: he was released on 15 December 2016 after being questioned on 9 October 2015; he gave an address as required; he was not prohibited from leaving the country. Further, there has been culpable delay in this case, between October 2014 when the offence allegedly took place and September 2019 when the EAW was issued. Extradition would be a significant interference with the private and family life of the Appellant, who has been in the United Kingdom since August 2017, and his now two year old son with whom it is important to him to have a relationship. The Appellant has no convictions in the United Kingdom and can be taken to have ‘completely turned his life around’. That is the essence of the argument set out in the grounds of appeal document. The Appellant has told me today that he has limited access to the documents in his case. I have reassured him that I have read the documents carefully. And I have just summarised the key points that were made in his favour in those documents.
5. The Appellant has addressed me at the hearing today. He has been able to update me as to the position in relation to his son. He tells me that his son was allowed to go and live with his mother in December 2020. That was after a court hearing in November 2020. The son had been taken into care in August 2019, when he was 10 months old. The Appellant tells me that although he remained separated from the child’s mother they are on friendly terms. He tells me that he is able to communicate regularly with

his son by Skype. He also tells me that he is allowed phone calls for free. He says he will be denied these opportunities if he is extradited. These things will not be available from a Lithuanian prison. He tells me how important they are to him because he wants to have a relationship with his son. As he explained to me: "I will completely lose any communication with my son; it will create distance between us". I accept what the appellant has told me today, for the purposes of considering whether there is an reasonably arguable Article 8 ground of appeal.

6. In my judgment, there is no reasonably arguable ground of appeal. In my judgment, there is no realistic prospect that this Court would find that the District Judge's conclusion on Article 8 was wrong. That is even if this court was considering fresh evidence and the up-to-date position, including in relation to the qualifying remand time served, and most importantly including in relation to the re-established communication with the son. The Court has to look at those matters alongside all the features of the case.
7. So far as seriousness is concerned, the nature of the index offence is this. In October 2014, while the Appellant was an inmate in a Lithuanian prison, he incited a third party to unlawfully acquire heroin and transport it to the prison, and attempt to hand it over to him. The third party, incited by the Appellant, purchased 5 foil wraps of heroin and transported them into prison. But the plan was thwarted and the third party was arrested. That is the nature of the accusation and the Court takes it from the official documents from the Respondent. As the District Judge rightly said, the Appellant is wanted for serious offending, committed as a serving prisoner, for which he faces significant term of imprisonment if convicted, especially given his history of offending in Lithuania. That history included a June 2006 robbery for which he was sentenced to 3 years 6 months; a 2010 robbery for which he was sentenced to 4 years and 10 months; and public order offences on October 2011 for which he was sentenced to 6 years 8 months (concurrent to the 4 years 10 months).
8. The ongoing period of qualifying remand is not in the circumstances capable of tipping the balance, including in combination with other matters. This Court could not say that it would necessarily exceed any custodial sentence to be imposed. The District Judge unassailably found that the Appellant had left Lithuania as a fugitive: he did so having given a false address when conditionally released on 15 December 2016, and within two weeks left Lithuania to go to Germany, thereby deliberately placing himself beyond the reach of the authorities. The delay and passage of time need to be seen in that context. The Appellant has been in the United Kingdom since August 2017 and was arrested in January 2020. The idea of 'completely turning his life around', with no UK convictions, need to be seen against that time frame.
9. I have carefully considered the position in relation to the son. I was able to ask the Appellant questions about this, because it was important that the Court had a clear picture and could consider that picture. The Appellant started a relationship and then had a child with his partner (October 2018), they later separated (in early 2020), and meanwhile as I have explained the child had been taken into care (August 2019) aged 10 months. The Appellant has remained in remand in prison. As I explained earlier, I accept for the purposes of today that he has re-established contact with his son, that he is on friendly terms with his ex-partner, and that they are able to work together so that the appellant can be in communication with his son. I accept that there will be an impact in relation to that relationship, and an impact on the son, if the Appellant is

extradited. I accept that that is an important matter and needs to be given significant weight. I also accept that that would be a reason for this Court looking again at the Article 8 balance in this case and considering it afresh.

10. Stepping back, and focusing on the outcome, this is a case in which the strong public interest considerations in favour of extradition decisively outweigh the factors which can weigh against it. In my judgment there is no realistic prospect of this Court reaching any other conclusion.

Conclusion

11. I therefore refuse permission to appeal on both grounds.

22.4.21