Case Nos: AC-2021-LON-03107

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2024] EWHC 3001 (Admin)

The Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 18 October 2024

BEFORE:

SIR PETER LANE
(Sitting as a Judge of the High Court)

BETWEEN:

PROSECUTOR GENERAL'S OFFICE (LITHUANIA)
Appellant/Applicant

-and-

MICHAILOV

Respondent

MS H HINTON (instructed by CPS, Extradition Unit) appeared on behalf of the Appellant/ Applicant.
MS A NICE (instructed by ACA Law Limited) appeared on behalf of the Respondent.

JUDGMENT

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(Official Shorthand Writers to the Court)

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1. SIR PETER LANE: This is a rolled-up application for permission to appeal and, if granted, the ensuing appeal brought by the appellant, which is the requesting authority, against the judgment of a district judge on 15 November 2021 to order the respondent, Mr Michailov's discharge from extradition to Lithuania.

2. The question which the district judge found in the respondent's favour was that extradition would be incompatible with the ECHR. the district judge found that the respondent would, if extradited, face a real risk of inhuman or degrading treatment, contrary to article 3 of that Convention.

3. The background to the present proceedings is, essentially, as follows. The respondent is a Lithuanian national, born on 28 May 1969. He had five previous convictions for violent offences committed in two jurisdictions, Lithuania and The Netherlands. His last conviction for attempted murder in July 2012 resulted in a prison sentence of three years imposed in 2013, all of which appears to have been served. The respondent's arrival in the United Kingdom is not precisely known. However, it appears that he left Lithuania shortly after the alleged crimes in respect of which his extradition to Lithuania is sought, as the police were not able to trace him there. The United Kingdom police traced him to an address in Bognor Regis, and he was arrested there on 6 April 2020, following which extradition proceedings took place before Westminster Magistrates' Court.

4. The hearing in that court took place on 10 September 2021. It was pursuant to an accusation warrant, issued by the appellant and certified by the NCA in April 2021. The warrant relates to three offences: two of causing bodily harm, which is not serious, in violation of public order. In broad terms, the conduct can be described as follows. On 3 April 2017, whilst drunk and in the communal area of accommodation, the respondent stabbed another with a knife and caused a wound which corresponded to slight bodily injury. On 4 April 2017, whilst drunk and in a communal area of accommodation, the respondent stabbed the same person with a knife and caused a wound which corresponded to slight bodily injury. On each occasion, it is alleged that the respondent disrupted public peace and caused slight injury by reason of disorderly conduct.

5. The offences of violence carry a maximum sentence of two years' imprisonment. The public order offence carries a maximum sentence of up to five years' imprisonment.

6. The district judge dismissed the respondent's challenge based on section 25 of the Extradition Act 2003, which enables the court to refuse or delay extradition if the individual's physical or mental condition is such that it would be unjust or oppressive to order it in their case.

7. So far as section 25 was concerned, the district judge at paragraph 13 of his judgment correctly reminded himself that the section concerns a much broader question than that of suicide alone; see in this regard, *XY v Prosecutor's Office of Oost Nederland* [2019] EWHC 624 (Admin), where the individual's condition and response to extradition were such that the effect of any therapy that they might receive in Holland was likely to be reduced.

8. There were before the district judge a number of expert reports concerning the respondent's mental health and risk of suicide. Two of these were from 2020, but a more recent report from Dr Carallo of August 2021 was particularly relied on by the district judge. Dr Carallo summarised her findings as follows:

> "I will conclude that the respondent suffers from mild general anxiety disorder and moderately severe depression, with PTSD emerging only under severe acute stress. There are several important factors, in combination, that would be likely to provoke suicide were the respondent to be returned to the judicial authority".

9. At paragraph 28, the district judge did not consider that this evidence satisfied the requirements of section 25. Despite what he had said at paragraph 13, the district judge did not consider the respondent's physical, as opposed to his mental condition, in undertaking the section 25 exercise.

10. The physical condition of the respondent appears to have arisen as a result of an accident that he sustained whilst he was on a bicycle some years earlier; apparently, in this jurisdiction. The respondent subsequently complained of persistent pain in his knee, reduced movement in that joint, and issues with his lower back.

11. The district judge had before him a report by Ms Ellis, an occupational therapist. Her report of September 2021 followed a visit to the respondent and his partner at their home. Ms Ellis recorded the respondent's description of his physical problems and observed that he walked with one elbow crutch. Ms Ellis considered that the respondent should, in fact, be provided with a second crutch in order to enable him to walk in a more balanced way (paragraph 7 of her report).

12. In paragraphs 14 and 15, Ms Ellis gave her conclusions as follows:

> "14. The three standardised assessments which I have undertaken with this client demonstrate a general weakness and inability of independence of this man. He is highly dependent on his partner and on the physical and mental support she constantly provides him every day and night. When she leaves the apartment for her own work, she tries hard to prepare the various items he needs during her absence.
>
> 15. There is no doubt that since his accident, Karl Michailov has become totally dependent on his partner for most of his physical and mental functions. I do not offer any opinion on prison conditions in Lithuania. But in my opinion, he would struggle to survive in any jail without the close personal support he currently has".

13. The district judge then set out his findings on section 21A of the 2003 Act as they related to Article 8 of the ECHR. I should say here that the effect of section 21A(1)(a) is to prohibit extradition if it would be incompatible with the rights guaranteed by the ECHR. The district judge said this at paragraph 30:

> "30. The RP correctly submits that notwithstanding a finding that extradition would not be oppressive and then (sic) such a finding is not dispositive of a proportionality finding in favour of the RP, I am obliged to conduct a *Celinski* exercise.
>
> Factors against Extradition
>
> (i) the RP is settled in the UK and is totally dependent upon his partner and extradition would cause a complete disruption to them as a family.
> (ii) the allegations, such as they are, stretch back in excess of 4 years. The RP is not a fugitive and the process is accusatorial.
> (iii) the RP suffers from a mild general anxiety disorder and extradition will heighten that anxiety and concern.

(iv) the RP would struggle in prison without close personal support and it may be doubtful whether such support as may be necessary is available in this JA and in Lithuanian prisons in particular.
(v) the RP has no convictions in the UK.

Factors in favour of extradition

(i) the weighty public interest in ensuring that the treaty obligations of the UK are kept and applied.
(ii) the relative serious nature of the allegations and the fact that the RP has convictions in this JA.
(iii) the mild general anxiety disorder which falls short in the judgment of this court of amounting to an anxiety disorder which would equate with depression.

31. Cases of this type are invariably finely balanced exercises. However, in this case I do not find that a basis in evidence exists by which to conclude that in respect of the Art 8 exercise extradition would be disproportionate".

14. Having found that extradition was not barred by section 14 of the 2003 Act by reason of delay, the district judge returned to the issue of section 21A, this time in the context of Article 3 of the ECHR.

15. At paragraph 41, he noted that he had before him a letter of assurance from the judicial authority guaranteeing persons surrendered a minimum space of three square metres and detention in a specified remand prison (Šiauliai) subject to Article 3 guarantees. Upon conviction, the appellant would serve a maximum of ten days at that prison and be subject to the same guarantees. Furthermore, the existence of a quarantine regime was specified and further amplified within a letter of 3 April 2020. I note that that last matter concerned the then current COVID 19 epidemic.

16. At paragraph 42, the district judge noted the submission of what is now the respondent that the assurances were of a generic nature. He also noted that, although this was an accusation warrant case, it was likely that the appellant would, in the view of counsel representing him, face detention at other prisons which were not subject to any assurances at all. The district judge did not consider that that necessarily followed.

17. At paragraph 43, the district judge articulated his most significant concern. This was whether the assurances given were sufficient to meet the combined evidence of Dr

Carallo and Ms Ellis. The judge considered it was clear from that evidence that the appellant was far from being able-bodied. The question for determination was whether or not “these generic assurances” were pertinent to the particular circumstances of the appellant. The judge considered that the appellant was, in the light of that evidence, "exceptionally vulnerable not only in a general sense but also within the context of a prisoner and whether on remand or serving a sentence".

18. At paragraph 44, the district judge found that, on a strict reading of the assurances, it was clear they were silent upon the individual circumstances of the case and that the court had “no evidence as to the type and quality of that care”.

19. At the first of two paragraphs numbered 45 in the judgment, the district judge said that this ground alone "has troubled the court particularly and I find that the generic weaknesses of the assurances are sufficient to reject the extradition application".

20. The district judge's conclusions begin at the second paragraph 45 and continue to paragraph 46. These paragraphs need to be set out in full.

> "45. If necessary and in order to determine whether, in the specific circumstances of the case before it, there is a real risk that the RP will suffer a breach of Art 3, the court should request further information.
>
> 46. I am mindful that proceedings need to be resolved within a reasonable time scale. Necessarily, for the court to seek further information will *a fortiori* delay the conclusion of the application. What should the court do in this instance? In my judgment, the generic nature of these assurances are deficient and are incapable of rectification in this particular case whatever information is sought from this JA. It is clear that this JA is unable to detain this RP in such a way as to secure his Art 3 rights. Any request for further information would be unlikely to assist this question and I am of the view that the matter should be brought to a close".

21. Accordingly, at paragraph 47, the district judge concluded that the Article 3 challenge succeeded.

22. The appellant, represented by Ms Hinton, challenges these conclusions as irrational. For the respondent, Ms Nice submits that they were ones to which the district judge

was entitled to come, bearing in mind the case law and the judge's discretionary powers of case management.

23. This appeal has been a long time reaching a hearing in this court. Initially, this was due to the desirability of awaiting the outcome of the proceedings in what became *Suceava District Court (Romania) v Gurau* [2023] EWHC 439 (Admin). In that case, the Divisional Court held that it was not possible to cross-appeal in proceedings under section 28 of the 2003 Act.

24. In the meantime, the respondent was convicted of an offence under section 18 of the Offences Against the Person Act 1861 and sentenced, on 13 April 2023, to four years' imprisonment with a five-year extended licence. His early release date was originally considered to be in December 2025, but the respondent's most recent statements now suggest that this will, in fact, be in the spring of 2026.

Case law: prison conditions in Lithuania

25. The relevant case law on prison conditions in Lithuania and assurances regarding those conditions is usefully summarised in the judgment of the Divisional Court in *Bazys v The Vilnius County Court, Republic of Lithuania & Anor* [2022] EWHC 1094. Before giving that summary, at paragraphs 12 and 13 of the judgment Holroyde LJ set out the general and well-established legal principles concerning the correct approach to ECHR Article 3 in the context of ECHR signatory states and members of the Council of Europe:

> 13. I consider the following principles to be well established by case law including *R(Ullah) v Special Adjudicator* [2004] UKHL 26, [2004] 2 AC 323, *Dorobantu v Romania* (case C-128/18) ('*Dorobantu*'), *ML* [2018] EUECJ C-220/18PPU, [2019] 1 WLR 1052 and *Zabolotnyi v Mateszalka District Court, Hungary* [2021] UKSC 14, [2021] 1 WLR 2569 ('*Zabolotnyi*'). Extradition will be refused if there are substantial grounds for believing that the requested person, if returned to the requesting state, faces a real risk that he will be subjected to inhuman or degrading treatment in prison such as to infringe his art. 3 rights. However, if the requesting state is a signatory to the ECHR and a member of the Council of Europe, there is a strong presumption that it will comply with its obligations under art. 3. That presumption may be rebutted by clear, cogent and compelling evidence, amounting to something approaching an

international consensus, for example in a pilot judgment of the European Court of Human Rights ('ECtHR') which identifies structural or systemic failings. If the benefit of the presumption is lost as a result of such internationally authoritative evidence, the requesting state must show by cogent evidence that there will be no real risk of a contravention of art. 3 in relation to the particular requested person in the prisons in which he is likely to be detained. An assurance as to the circumstances in which the requested person will be held may be sufficient to exclude any such risk. Where an assurance is given or endorsed by the requesting judicial authority, it must be relied on by the executing judicial authority unless there are specific indications that the detention conditions in a particular prison in which the requested person is likely to be held will infringe art. 3. Where (as in this case) the assurance is provided by a non-judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority. There is no rule requiring evidence of any particular type or quality, or setting out any hierarchy of the factors listed in *Othman v UK* (2012) 55 EHRR 1 ('*Othman*'), in carrying out such an assessment.

The case law relating to Lithuania was then as set out at paragraphs 14 to 38:

"(1) Jane (no.1)

14. In *Jane v Lithuania* [2018] EWHC 1122 (Admin) ('*Jane (no 1)*) the appellant appealed against an order for his extradition pursuant to an accusation EAW. He had contended that there was a real risk that his rights under art. 3 would be infringed because of a threat of violence by a non-state agent and/or because of conditions in Lithuanian remand prisons generally. The Divisional Court (Hickinbottom LJ and Dingemans J, as he then was) reviewed previous case law which showed that there was an international consensus that there was a real risk of treatment contrary to art. 3 in Lukiškes and Šiauliai remand prisons, principally because of overcrowding and very bad living conditions. It therefore became incumbent upon Lithuania to demonstrate by clear and cogent evidence, that prison conditions had improved to such an extent that the previous view should not prevail".

15. The Divisional Court held that the DJ had fallen into error because Lithuania had failed to adduce any such evidence. It considered fresh evidence, including the evidence of a Lithuanian lawyer Mr Liutkevicius (who is the Chief Legal Officer of the Human Rights Monitoring Institute, and has conducted extensive research into the protection of human rights in the Lithuanian criminal justice system), and a report published in 2018 by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('the CPT') on conditions in remand prisons. The Divisional Court concluded that, although Lithuania had taken commendable steps to improve

conditions in remand prisons, there remained a real risk that a surrendered person held in Lukiškes or Šiauliai remand prison would suffer inhuman or degrading treatment contrary to art. 3. The appeal was then stayed, in accordance with the procedure laid down by the Court of Justice of the European Union ("CJEU") in *Criminal proceedings against Aranyosi* (Case C-404/15) [2016] QB 921 (*"Aranyosi"*), to enable Lithuania to put forward further assurances.

16. Further assurances were given. By a letter to the Crown Prosecution Service ('CPS') dated 7 August 2018, the Director General of the Prison Department under the Ministry of Justice of the Republic of Lithuania issued an assurance and guarantee applicable, during their detention, to all persons surrendered from the United Kingdom pursuant to an EAW for the purpose of a criminal prosecution or the execution of a sentence. It said:

> '1. All persons surrendered under an accusation warrant from the United Kingdom will be held in Kaunas Remand Prison, Lukiškes Remand Prison-Closed Prison or Šiauliai Remand Prison, whereby they will be guaranteed a minimum space allocation of no less than 3 square metres per person and held in compliance with Article 3 of the European Convention on Human Rights.
>
> 2. Persons surrendered under a conviction warrant that may spend a maximum of 10 days at one of the remand centres set out in clause 1 will be subject to the same guarantees and will be housed in cells with a minimum space allocation of no less than 3 square metres per person in compliance with Article 3 of the European Convention on Human Rights.
>
> 3. All persons held in Lukiškes Remand Prison-Closed Prison or Šiauliai Remand Prison as per clause 1 and 2 above will only be held in the refurbished or renovated parts of the prisons and in compliance with Article 3 of the European Convention on Human Rights."

(2) Jane (no.2)

17. Mr Jane's appeal then came back before the Divisional Court. In *Jane v Lithuania* [2018] EWHC 2691 (Admin) (*'Jane (no 2)*) the court concluded that the appellant was likely to be detained on remand at Lukiškes Remand Prison, and held that the terms of the August 2018 assurance sufficed to show that there would be no real risk that the appellant would there be subjected to impermissible treatment.

By a further letter to the CPS, dated 8 July 2019, the Deputy Director of the Prison Department provided a general assurance applicable to all persons surrendered to Lithuania from the United Kingdom for the purpose of a criminal prosecution or execution of a sentence of imprisonment:

> '1. All persons surrendered from the United Kingdom will be guaranteed a minimum space allocation of no less than 3 square metres per person and held in compliance with Article 3 of the European Convention on Human Rights.
>
> 2. All persons surrendered will not be required to serve any part of their sentence at unrenovated premises (blocks/wings) of Alytus Correctional House, Marijampolé sector (subdivision) of Marijampolé Correctional House and sector no 1 and no 2 of Pravieniškes Correctional House-Open Prison Colony.
>
> 3. All persons surrendered from the United Kingdom will be detained in conditions reducing a risk to inter prisoner violence/disease transfer and drug influences.
>
> 4. All persons surrendered from the United Kingdom will be guaranteed the protections of the European Convention on Human Rights.
>
> 5. Persons surrendered will be housed in cell-type accommodation, where possible.'

(3) Bartulis

19. In *Bartulis* the Divisional Court heard three appeals against orders for extradition to Lithuania pursuant to accusation or conviction EAWs. Their grounds of appeal related to what were said to be inhuman and degrading conditions at three male prisons, namely Alytus, Marijampolé and Pravieniškes Correction Houses, and in particular to whether the Lithuanian authorities could adequately protect extraditees against the risk of violence by other prisoners. Such violence had been prevalent because of a dangerous "caste system" which formed part of the prisoners' sub-culture, and was at least partly related to the use of dormitory-style accommodation in the correction houses.

20. The court considered a report on the Lithuanian prison estate published by the CPT in June 2019, following visits to Lithuanian prisons in April 2018, which found – amongst other very unsatisfactory features - "truly extraordinary levels of inter-prisoner violence intimidation and exploitation", and incidents of excessive force being used by prison staff. The court also considered an action

plan, approved on 27 September 2018, which the Lithuanian government had developed in response to the CPT's findings. It considered further information and assurances from Lithuania, and fresh evidence as to prison conditions, including a report dated 13 September 2019 by Mr Liutkevicius.

21. The court concluded, at [118], that the problems of the caste system and of inter- prisoner violence were real, not fanciful. The nature of the accommodation in correction houses was important, because unofficial hierarchies are better able to operate in dormitory-style accommodation, particularly when (as was the case) staffing levels were low. Lithuania had, however, responded positively to the CPT 2019 report. Although the steps thus far taken, or in hand, had not abolished the problem completely, the court at [121] considered that they constituted an adequate response. The court referred in particular to the allocation of specific funding; the increase in front-line staffing; the existing and planned refurbishments; the displacement of ring-leaders and their assistants; the reduction in the prison population, which gave the prison authorities more flexibility as to the moving of prisoners; the ready access by prisoners to lawyers and the domestic courts; and the heightened focus on the problem, which meant that Lithuania was well aware of the impact if an extradited person were to suffer serious harm.

22. At [125] – [127] the court concluded:

> '125. There is no consensus amongst Member States that the presumption is lost. There is no evidence that another Member State had declined to extradite to these three correction houses. There is no 'pilot judgment' from the ECtHR concerning Lithuanian correction houses.
>
> 126. Taking all these factors together, we conclude, after a careful balancing exercise, that the presumption of compliance has not been displaced. Without the Action Plan and the evidence of implementation, real if incomplete, our decision might have been otherwise.
>
> 127. Given our conclusion on the presumption, we are not in the position of seeking to rely on the assurances offered. It is important nevertheless to stress that, once given, they must be adhered to in respect of any prisoner extradited from the UK to Lithuania, since the terms of the assurances are offered expressly to all such. Breach of such assurances might prove significant in future.'

23. The appeals based on alleged breaches of art. 3 were therefore dismissed.

24. Lukiškes remand prison was closed in July 2019. Thus for present purposes, the effect of the three decisions to which I have referred is that Lithuania has lost the benefit of the presumption of compliance with art. 3 in relation to the only remand prison where Mr Besan is likely to be held, namely Šiauliai (*Jane (no.1)*), but the August 2018 assurance has been held to be sufficient to exclude any real risk of a breach of art. 3 rights (*Jane (No. 2)*). Lithuania has not lost the benefit of the presumption in relation to detention in a correction house.

(4) The assurance of 3 April 2020

25. Subsequent to the decision in *Jane (no. 2)*, the Director General of the Prison Department informed the CPS, by a letter dated 3 April 2020 that, in view of the danger caused by the spread of Covid-19, the guarantees given on 7 August 2018 and 8 July 2019 would no longer be applied. In their place he issued a new assurance applicable to all persons surrendered from the United Kingdom pursuant to an EAW for the purpose of a criminal prosecution. The material part of this assurance, which remains in force, is in the following terms:

> '1. All persons surrendered from the United Kingdom will be guaranteed a minimum space allocation of no less than 3 square metres per person and held in compliance with Article 3 of the European Convention on Human Rights.
>
> 2. All persons surrendered from the United Kingdom, if held in Šiauliai Remand Prison, will only be held in the refurbished or renovated parts of the prison and in compliance with Article 3 of the European Convention on Human Rights.
>
> 3. All persons surrendered from the United Kingdom, if convicted, that may spend a maximum of 10 days at Šiauliai Remand Prison will be subject to the same guarantees as contained in clauses 1 and 2.
>
> We also draw to your attention that due to the quarantine regime introduced by the decision of the Government of the Republic of Lithuania, in view of the danger caused by the spread of COVID-19 disease, the work of Lithuanian institutions is encumbered, which might have impact on the implementation of the assurance.

26. The final paragraph of that letter has been referred to as 'the Covid caveat', and I shall adopt that convenient shorthand term.

26. In Mr **Bazys'** case, the DJ wrongly understood that that assurance applied not only to those held in remand prisons in Lithuania but also to those serving sentences in correction houses. In May 2021

Lithuania confirmed that the 3 April 2020 assurance applies only to those surrendered pursuant to accusation EAWs: clauses 1 and 2 relate to surrendered persons whilst on remand, clause 3 relates to the same persons when they become inmates following conviction. The assurance does not refer to those surrendered under conviction EAWs. It is therefore relevant to Mr Besan's case but not to Mr **Bazys'** case.

(5) Gerulskis

27. The assurance of 3 April 2020 was considered by a Divisional Court in *Gerulskis v Prosecutor General's Office of the Republic of Lithuania* [2020] EWHC 1645 (Admin) ("*Gerulskis*"). The appellants in that case argued that the court could not have any confidence in assurances provided by Lithuania, having regard to evidence that assurances had been breached in particular cases, including that of Mr Jane, and having regard also to the Covid caveat. The court (Dingemans LJ and Garnham J) rejected those submissions, and concluded that there was nothing to suggest a real risk of treatment contrary to art. 3 if the appellants were extradited to Lithuania.

28. It was held, at [52], that the only proven breach was that Mr Jane had been held at a remand prison other than those identified in the assurance dated 7 August 2018. However, the most material part of the assurance, that relating to personal space, had been honoured, and Mr Jane had not suffered treatment in breach of art. 3. In those circumstances, the breach of the assurance was not such as would justify the court ignoring the assurances given by Lithuania.

29. As to the Covid caveat, Dingemans LJ at [58] expressed concern that the wording of a letter dated 3 April 2020 suggested that Lithuania did not feel bound to honour assurances given to the courts of England and Wales, but concluded that the general assurance given on that date confirmed the most material assurances (as to personal space and as to extradited persons only being held in the refurbished or renovated parts of Šiauliai remand prison) and showed that there was no real risk of impermissible treatment contrary to art 3. There was nothing to suggest that the assurances provided by the Prison Department of the Ministry of Justice should be either discounted or ignored.

30. Dingemans LJ went on to say, at [60], that -

> '… Lithuania's practice of providing general assurances, and then replacing them as prison conditions improve, risks creating problems of technical breaches of assurances. An assurance about an individual prisoner, once given, must be complied with until the expiry of the prisoner's sentence of imprisonment."

31. However, on the facts, the court concluded that there was nothing to suggest a real risk of impermissible treatment contrary to art. 3 if Mr Gerulskis, or another appellant whose appeal was heard at the same time, were extradited to Lithuania.

32. In a letter dated 8 February 2021, the Prison Department gave an assurance that Mr **Bazys,** and a number of other men whose extradition from the United Kingdom was sought pursuant to convictions EAWs, would not serve their sentences in Šiauliai remand prison if surrendered. This was because of a national regulation which provided that only persons who had been sentenced to more than 10 years' imprisonment could be allocated to serve their sentences in Šiauliai remand prison.

33. The appellant in *Bernotas v Lithuanian Judicial Authority* [2021] EWHC 1410 (Admin) ('*Bernotas'*) was one of those named in the letter of 8 February 2021. It was submitted on his behalf that there was a real risk that he would suffer treatment in breach of art. 3, because that letter did not rule out a convicted extraditee being sent to a remand prison for up to 10 days after his surrender, before being allocated to a correction house. There was therefore a real risk that the appellant would serve part of his sentence at Šiauliai Remand Prison. Chamberlain J rejected that submission: he held that the assurance given in that letter was an assurance that the appellant would not serve any part of his sentence at Šiauliai, "not even a few days at the start".

34. In a letter of December 2021, Lithuania reiterated that persons surrendered pursuant to a conviction EAW, sentenced to less than 10 years' imprisonment, will not be allocated to serve their sentences in Šiauliai remand prison.

(6) Zabolotnyi

35. In *Zabolotnyi* the Supreme Court confirmed, at [44], that even if a requesting state which is a party to the ECHR and a member of the European Union has lost the benefit of the general presumption that it will comply with its obligations under article 3 in relation to its prison estate as a whole, 'it will still normally enjoy a presumption that it will comply with specific assurances given in individual cases.'

36. At [46] Lord Lloyd-Jones, with whom the other Justices agreed, added that –

> 'In deciding whether an assurance can be relied upon, evidence of past compliance or non-compliance with an earlier assurance would obviously be relevant. A state's failure to fulfil assurances in the past may be a powerful reason to disbelieve that they will be fulfilled in the future. … The weight to be

> attached to a previous breach of assurance would be likely to vary from cases to case depending on all the circumstances, including how specific the previous assurance was and whether the breach was deliberate or inadvertent.'

Lord Lloyd-Jones made clear that a past breach of an assurance is relevant, whether the assurance concerned was given to the United Kingdom or to a third state. The important question is whether the evidence of previous breach(es) is "sufficiently cogent to rebut the presumption" that the assurance under consideration can be relied upon: see [63].

(7) Michailovas

37. This court's attention was also invited to *Michailovas v The Republic of Lithuania* [2021] NIQB (*'Michailovas*), a decision of the High Court of Justice in Northern Ireland. The court in that case conducted a detailed review of evidence relating to prison conditions in Lithuania and of the case law (including the English cases which I have summarised above). It held, at [94], that the effect of the assurances given on 3 April 2020 was that those whose return was requested pursuant to a conviction EAW were excluded from the new guarantee and would not have the benefit of any of the assurances or guarantees which had previously been given by Lithuania.

38. The court concluded, at [117], that there were substantial grounds for believing that surrender of the appellant to Lithuania pursuant to a conviction EAW would expose him to a real risk of inhuman or degrading treatment in breach of art. 3:

> 'The specific ingredients of the proscribed treatment to which Mr M would be exposed are inadequate cell space, inter-prisoner violence and the transmission of HIV and/or Hepatitis C. In the context of a deteriorating situation (per the latest CPT report), preceded by a series of inconsistent, evasive and increasingly unreliable communications, the Lithuanian Government, from April 2020, has found itself in the position of being unable to provide any assurances or guarantees addressing any of these risks as regards convicted prisoners. Having regard to the history in its totality, the conclusion that the Art 3 ECHR risk pertaining to Mr M in the event of his surrender to Lithuania to complete his prison sentence is irresistible'."

27. The position I take to be as follows. Lithuania has lost the presumption of compliance in respect of conditions in Šiauliai Prison, which is a remand prison for those accused of offences, as is the case with the respondent. The litigation concerning Mr Jane, referred to by Holroyde LJ, has led to the practice of providing assurances of the kind

proffered in the present case, which were before the district judge and relied on by the appellant before the district judge.

28. In the matter of inter-prisoner violence, which features significantly in the case law, the presumption, however, remains in place. That has been confirmed by the Divisional Court in *Urbonas v Prosecutor General's Office of the Republic of Lithuania* [2024] EWHC 33 at paragraph 38. The Northern Ireland case of *Michailovas v Lithuania [2021] NIQB* 60, relied on by the respondent, is clearly not in accord with the judgments in this jurisdiction. It does not begin to show that those judgments were plainly wrong.

Aranyosi

29. In *Criminal Proceedings against Aranyosi* [2016] QB 921, the Course of Justice of the European Union had this to say about extradition in the context of Article 4 of the EU Charter of Fundamental Rights, which corresponds with Article 3 of the ECHR:

> "77. The principle of mutual recognition on which the European arrest warrant system is based is itself founded on the mutual confidence between the Member States that their national legal systems are capable of providing equivalent and effective protection of the fundamental rights recognised at EU level, particularly in the Charter (see, to that effect, judgment in F., C-168/13 PPU, EU:C:2013:358, paragraph 50, and, by analogy, with respect to judicial cooperation in civil matters, the judgment in Aguirre Zarraga, C-491/10 PPU, EU:C:2010:828, paragraph 70).
>
> 78. Both the principle of mutual trust between the Member States and the principle of mutual recognition are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (see, to that effect, Opinion 2/13, EU:C:2014:2454, paragraph 191).
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> 79. In the area governed by the Framework Decision, the principle of mutual recognition, which constitutes, as is stated notably in recital (6) of that Framework Decision, the 'cornerstone' of judicial cooperation in criminal matters, is given effect in Article 1(2) of the

Framework Decision, pursuant to which Member States are in principle obliged to give effect to a European arrest warrant (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).

80. It follows that the executing judicial authority may refuse to execute such a warrant only in the cases, exhaustively listed, of obligatory non-execution, laid down in Article 3 of the Framework Decision, or of optional non-execution, laid down in Articles 4 and 4a of the Framework Decision. Moreover, the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of that Framework Decision (see, to that effect, judgment in Lanigan, C-237/15 PPU, EU:C:2015:474, paragraph 36 and the case-law cited).

81. It must, in that context, be noted that recital 10 of the Framework Decision states that the implementation of the mechanism of the European arrest warrant as such may be suspended only in the event of serious and persistent breach by one of the Member States of the principles referred to in Article 2 TEU, and in accordance with the procedure provided for in Article 7 TEU.

82. However, first, the Court has recognised that limitations of the principles of mutual recognition and mutual trust between Member States can be made 'in exceptional circumstances' (see, to that effect, Opinion 2/13, EU:C:2014:2454, paragraph 191).

83. Second, as is stated in Article 1(3) thereof, the Framework Decision is not to have the effect of modifying the obligation to respect fundamental rights as enshrined in, inter alia, the Charter.

84. In that regard, it must be stated that compliance with Article 4 of the Charter, concerning the prohibition of inhuman or degrading treatment or punishment, is binding, as is stated in Article 51(1) of the Charter, on the Member States and, consequently, on their courts, where they are implementing EU law, which is the case when the issuing judicial authority and the executing judicial authority are applying the provisions of national law adopted to transpose the Framework Decision (see, by analogy, judgments in Dereci and Others, C-256/11, EU:C:2011:734, paragraph 72, and Peftiev and Others, C-314/13, EU:C:2014:1645, paragraph 24).

85. As regards the prohibition of inhuman or degrading treatment or punishment, laid down in Article 4 of the Charter, that prohibition is absolute in that it is closely linked to respect for human dignity, the subject of Article 1 of the Charter (see, to that effect, judgment in Schmidberger, C-112/00, EU:C:2003:333, paragraph 80).

86. That the right guaranteed by Article 4 of the Charter is absolute is confirmed by Article 3 ECHR, to which Article 4 of the Charter corresponds. As is stated in Article 15(2) ECHR, no derogation is possible from Article 3 ECHR.

87. Articles 1 and 4 of the Charter and Article 3 ECHR enshrine one of the fundamental values of the Union and its Member States. That is why, in any circumstances, including those of the fight against terrorism and organised crime, the ECHR prohibits in absolute terms torture and inhuman or 14 degrading treatment or punishment, irrespective of the conduct of the person concerned (see judgment of the ECtHR in Bouyid v. Belgium, No 23380/09 of 28 September 2015, § 81 and the case-law cited).

88. It follows that, where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, having regard to the standard of protection of fundamental rights guaranteed by EU law and, in particular, by Article 4 of the Charter (see, to that effect, judgment in Melloni, C-399/11, EU:C:2013:107, paragraphs 59 and 63, and Opinion 2/13, EU:C:2014:2454, paragraph 192), that judicial authority is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment.

89. To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN.

90. In that regard, it follows from the case-law of the ECtHR that Article 3 ECHR imposes, on the authorities of the State on whose territory an individual is detained, a positive obligation to ensure that any prisoner is detained in conditions which guarantee respect for human dignity, that the way in which detention is enforced does not cause the individual concerned distress or hardship of an intensity exceeding the unavoidable level of suffering that is inherent in detention and that, having regard to the practical requirements of imprisonment, the health and well-being of the prisoner are

adequately protected (see judgment of the ECtHR in Torreggiani and Others v. Italy, Nos 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, and 37818/10, of 8 January 2013, § 65).

91. Nonetheless, a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member State cannot lead, in itself, to the refusal to execute a European arrest warrant.

92. Whenever the existence of such a risk is identified, it is then necessary that the executing judicial authority make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State.

93. The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subject to inhuman or degrading treatment in the event that he is surrendered to the authorities of that Member State.

94. Consequently, in order to ensure respect for Article 4 of the Charter in the individual circumstances of the person who is the subject of the European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4.

95. To that end, that authority must, pursuant to Article 15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State."

Discussion

30. At the hearing before me, attention focused on the nature of the submissions the parties had made to the district judge on the subject of ECHR Article 3. The position was helpfully clarified by counsel over the short adjournment on 15 October 2024. It

appears from that clarification that Article 3 was only raised by the respondent the day before the hearing in Westminster Magistrates' Court on 10 September 2021. This was after Ms Hinton, who then as now appeared for the judicial authority, had filed her opening note. The district judge, accordingly, asked for post-hearing submissions in writing on the issue. On 4 October, Ms Hinton filed an amended opening note. Her client's position, as there expressed, was that the evidence tendered by the respondent of his mental and physical health, read in the light of the assurances, meant that the position had not been reached where there were sufficient grounds for believing that the respondent, if returned, faced a real risk of Article 3 harm.

31. The position taken by counsel then acting for the respondent was as follows:

> "49. In respect of the *Aranyosi* and *Doranbantu* information exchange process, the RP submits that this would only become necessary in this case in the event that the court concluded that there is a generalised non-case specific risk of Article 3 ill treatment in Lithuanian prisons. The court is entitled to conclude that this RP cannot be imprisoned whether in the UK or elsewhere because of his vulnerabilities and thereby discharge him pursuant to both ss. 25 and s. 21A EA2003 (Article 3). It would be a moot exercise to try to elicit a further assurance in any event, particularly where the conviction assurance has been withdrawn".

32. Ms Hinton's position before me remained the same as in her revised opening note of October 2021. In short, the so-called second stage in *Aranyosi* had not been reached. However, in my view, the fact that the legal reality is not as sharp-edged as Ms Hinton suggests is made evident by the judgment of Chamberlain J in *Bacau District Court Romania v Andy-Richard Iancu* [2021] EWHC 1107 (Admin):

> "15. Mr Allen submits that *Aranyosi* shows that, having reached the view on the materials before him that there was a real risk of treatment contrary Article 3 in Romanian prisons, the judge was obliged to seek further information under Article 15(2) of the Framework Decision. The request which he approved on 18 September 2020 could not satisfy that obligation for three reasons. In the first place, the judge frankly admitted at [22] of his judgment of 16 December 2020 that he had not at that stage been aware of the *Aranyosi* procedure. Secondly, the request came from the CPS, rather than from the 'executing judicial authority' as required by Article 15(2). Thirdly, an *Aranyosi* request cannot be made until the issuing judicial authority has found, on the material before it, that there is a

real risk that the requested person will be subject to treatment contrary to Article 3. In this case, however, that question was still the subject of argument at the point when the request was made.

16. On this last point, Mr Hall drew my attention to the decision of the Divisional Court (Hamblen LJ and Ouseley J) in *Purcell v Public Prosecutor of Antwerp* [2017] EWHC 1981 (Admin), [2017] 3 CMLR 34. In that case, it was argued for the appellant that the *Aranyosi* procedure for requesting further information 'involves an evidential threshold which must be satisfied before such a request is made'. Hamblen LJ said this:

> '18. In my judgment, this is an incorrect interpretation of the *Aranyosi* decision. The case emphasises the importance of the court having 'objective, reliable, specific and properly updated evidence' before any determination of a breach of art.3 is made, and in particular information relating to the conditions in which the individual in question will be detained. It is 'to that end' that further information is to be sought. The court must obviously be satisfied that there is a need to seek further information but there is no evidential threshold to be crossed before it can do so. There is therefore no implication from the making of the request for further information that the court has found that art.3 would be breached on the information currently before it, or that a prima facie case to that effect has been made out.
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> 19. This is supported by Criminal Practice Direction 50 A.1, upon which the appellants relied, which refers to requests being made 'where the issues are such that further information from the requesting authority or state is needed….'

17. Mr Allen did not invite me to depart from this part of the Divisional Court's reasoning in *Purcell*. Even if such an invitation had been made, I would have declined it. Not only was this a judgment of an experienced Divisional Court, but it also interprets the Framework Decision in a way which promotes one of its important purposes – the maintenance (to the extent possible) of the strict time limits in Article 17. It would be contrary to the scheme of the Framework Decision if courts were required to adopt a rigid two-stage procedure of first making a formal finding that the generic materials established a real risk and only then going on to ask for supplementary information about the conditions in which the requested person will be held".

33. Those findings led Chamberlain J to hold at paragraph 18 that the case of *Purcell* was fatal to counsel's submission that there could be no Article 15(2) request until the judge had found a real risk on the other material before him

34. Before me, Ms Hinton relied on the principle that, even where the presumption has been displaced, thus necessitating the requesting state to give an assurance about treatment in detention following extradition, the signatory state's word should be taken at face value ,absent some sort of exceptional circumstances. I accept that proposition. I do not consider that what the Divisional Court has said about "technical" breaches of assurances by the Lithuanian authorities amounts to such exceptional circumstances. But, importantly, the assurance that was before the district judge did not deal, and was plainly not intended to deal, with the respondent's health issues and how they might be addressed in the prison system in Lithuania. It had been proffered for a distinctly different purpose.

35. I consider that the position before the district judge was as follows. The district judge was entitled to conclude that the combination of problematic prison conditions in Lithuania and the evidence of the respondent's health, both physical and mental, was such that the second stage in *Aranyosi* was engaged and that he was entitled to seek "supplementary information on the conditions in which it is envisaged that" the respondent would be detained (see *Aranyosi* paragraph 95). This is, in fact, the option identified by Ms Hinton at paragraphs 5 and 6 of her skeleton argument for the present hearing. As she there says, "If the district judge was concerned that the health condition of the respondent required a specific response, then the district judge could have required a specific response to be given. However, the district judge did not do so."

36. This brings me back to what the district judge said at paragraphs 45 and 46 of his judgment. It is convenient to repeat them, because they require close analysis.

> "45. If necessary and, in order to determine whether, in the specific circumstances of the case before it there is a real risk that the RP will suffer a breach of Art 3, the court should request further information.
>
> 46. I am mindful that proceedings need to be resolved within a reasonable time scale. Necessarily, for the court to seek further information will *a fortiori* delay the conclusion of the application. What should the court do in this instance? In my judgment, the generic nature of these assurances are deficient and are incapable of rectification in this particular case whatever information is sought from this JA. It is clear that this JA is unable to detain this RP in

> such a way as to secure his Art 3 rights. Any request for further information would be unlikely to assess this question and I am of the view that the matter should be brought to a close".

37. Ms Hinton has characterised these passages as irrational. With respect to the district judge, I am compelled to agree. The finding that the assurances before the district judge, which I reiterate were provided for a different purpose, were "incapable of rectification in this particular case whatever information" was sought from Lithuania is wholly remarkable, particularly in the case of a State which is a member of the Council of Europe and the European Union. So, too, is the sentence, "It is clear that this JA is unable to detain this RP in such a way as to secure his Art 3 rights".

38. In so finding, the district judge appears to have accepted uncritically the submission in paragraph 49 of the respondent's post-hearing written submissions of 15 October 2021, that "this RP cannot be imprisoned whether in the UK or elsewhere because of his vulnerabilites". Those vulnerabilities were described in the most recent medical report before the district judge by Dr Korallo as "mild general anxiety disorder and moderately-severe depression, with PTSD emerging only under severe stress". In addition, the occupational health practitioner, Ms Ellis, had referred to the respondent as having become totally reliant on his partner, with the result that he would "struggle to survive in any jail without the close personal support he currently has".

39. One does not need the benefit of hindsight to see the complete unreality of the proposition that the respondent could never be imprisoned anywhere in the world, no matter what the offence and no matter what measures might be put in place to address his needs, without a real risk of him suffering Article 3 ill treatment. But, in any event, hindsight is available. After the hearing before the district judge, the respondent was able to inflict grievous bodily harm on another individual, despite all the appellant's problems. As a result, he is currently serving a lengthy sentence of imprisonment in HMP Maidstone. As far as I am aware, it has not been submitted on his behalf that the respondent is currently being subjected to Article 3 ill-treatment.

40. I do not consider that the use of the word "unlikely" in the last sentence of paragraph 46 of the district judge's judgment assists the respondent. The essential thrust of the district judge's thinking is clear.

41. Faced with these obvious difficulties, Ms Nice submitted that paragraph 46 of the judgment was driven by considerations of case management, as to which the district judge has a wide measure of discretion. I do not accept this submission. At paragraph 46, the district judge said that the proceedings needed to be resolved within a "reasonable" timescale. The expression "reasonable" is, however, protean in nature. An essential aspect of what is reasonable in a case such as the present will be whether a particular judicial action will involve unfairness to a party. The district judge considered at paragraph 46 that, if he were to seek further information, that "will *a fortiori* delay the conclusion of the application". That is, of course, true. But it cannot be a compelling factor on its own, otherwise the effect of *Aranyosi* would be seriously diluted.

42. The district judge concluded that it would not be reasonable to delay because there was simply nothing that the Lithuanian judicial authority could possibly say which would alleviate the risk of Article 3 harm, given the finding that the respondent was not a person who could be imprisoned in any jurisdiction. But that finding was, as I have found, irrational.

43. I have had regard to Ms Nice's reliance on the judgment in *Iiancu*. There, Chamberlain J found it was a proper exercise of the judge's powers of case management to refuse to admit a late piece of evidence comprising an assurance from the judicial authority. At paragraph 25 of his judgment, Chamberlain J cited the dictum of Gross LJ at paragraph 20 of *DPP v Petrie* [2015] EWHC 48 (Admin) that

> "It is essential that parties to proceedings in the magistrates' court should proceed on the basis of a need to get matters right first time; any suggestion of a culture readily permitting an opportunity to correct failures of preparation should be firmly resisted".

44. The circumstances of the present case are, however, quite different from those in *Iancu*. In the present case, the Article 3 issue was raised by the respondent only just before the hearing and had to be dealt with by post-hearing submissions. In these circumstances, the appellant cannot possibly be criticised for failing to adduce evidence before the district judge on the subject of Article 3 by reference to the respondent's mental and physical health. The fact that the respondent's stance was that the first limb of

Aranyosi was not made out did not mean the district judge was relieved of his duty properly to address the need for an assurance, if he concluded that the first limb was, in his view, met.

45. Ms Nice submitted that it could be seen from post-decision evidence, which the respondent has adduced, that the district judge's decision would have been the same on the Article 3 issue, in any event. In this regard, Ms Nice drew attention to a letter dated 18 March 2022 from the judicial authority, in which details are given of the provision made for the physical and mental health care of prisoners, both those on remand and those who have been convicted of crimes. This includes social care for those needing short-term or long-term assistance from others. Ms Nice said that this information failed to make specific reference to the respondent's position as it was found to be by the district judge.

46. I do not consider that it is appropriate to pick out this one piece of the extensive post-decision evidence to the exclusion of the rest. The evidence that the district judge would notionally have before him now includes the important fact that the respondent was subsequently convicted of a serious offence and is currently imprisoned in this jurisdiction. Furthermore, the new evidence includes significant other material upon which Ms Nice relies; namely, that the respondent is, according to his account, no longer able to manage on crutches but has to use a wheelchair. The fact that the respondent is a wheelchair user is confirmed by a letter of 31 August 2024 from HMP Maidstone, which says that the wheelchair was not provided by prison healthcare; that the respondent is not registered as disabled; and that he benefits from a personal evacuation plan.

47. Even more recent evidence from the respondent's solicitor indicates that a fellow prisoner in Maidstone is acting as the respondent's personal assistant there, having a cell opposite the respondent "on the landing". This prisoner gets food for the respondent and offers him various forms of other assistance. The respondent, in particular, needs help getting to and from a shower.

48. Ms Nice sought at the hearing to adduce the report of 18 July 2024 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

Punishment ("CPT"). This report details a visit carried out by the CPT from 12 to 22 February 2024 to certain prisons in Lithuania. Although I considered the report *de bene esse*, I refused to admit it into evidence. It was proffered far too late. Indeed, it was proffered only in the light of Ms Hinton's submission at the hearing that the report was not being relied on by the respondent.

49. The upshot of these findings is as follows. On the basis of the current admissible evidence, as at the date of the hearing on 15 October 2024 the appellant has failed to show that the appeal should be allowed and the case remitted to Westminster Magistrates' Court under section 29 of the 2003 Act, with a direction for the judge to proceed as he would have been required to do if he had decided the Article 3 question differently.

50. Conversely, the respondent has, on the basis of that evidence, failed to show that the district judge, despite the serious error that I have identified in his judgment, would still have decided the Article 3 issue in favour of the respondent.

51. The position of a wheelchair user in prison is, I find, a matter of concern; at least where imprisonment is to be in a country where this court has found prison conditions to be problematic. This point emerges from the recent judgment of McGowan J in *Giana v. Romania* [2024] EWHC 1613 (Admin). In the light of the witness statement of the respondent's solicitor mentioned earlier, I note, in particular, what McGowan J had to say at paragraph 35 of her judgment about the possibly problematic nature of another prisoner being deployed to assist the wheelchair-using prisoner with various personal matters. This is a matter which may need to be addressed in due course.

52. Following the hearing on 15 October, the appellant applied to adduce evidence from Lithuania on the issue of wheelchair-dependent prisoners. The evidence comprises a short letter dated 16 October 2024. This refers to "prisoners serving a custody sentence" who need the assistance of others due to their physical disabilities, chronic illnesses, age or other reasons. The unit concerned is said to be in Pravieniškės Prison No.2.

53. Ms Nice, in her written submissions of 17 October, opposes the admission of this evidence at this stage. She makes the point, which is in any event apparent, that the information seems to cover only prisoners serving a custodial sentence; whereas the respondent is wanted on an accusation warrant. Whether the respondent would be accommodated at the prison mentioned in the letter whilst on remand is, therefore, moot. I agree with Ms Nice that the application to admit this evidence is, in her words, "a tacit admission or concession that the court does not have adequate material to decide the appeal". However, I disagree with her submission that evidence regarding wheelchair-using prisoners could have been obtained at any time after October 2023, when the respondent's use of a wheelchair was first brought to the attention of the parties or, if not, then on or after February 202 when the respondent's first addendum statement was served. Ms Nice herself reminds us at the end of her submissions that this is a case characterised by, as she puts it, the "evolving" nature of the evidence. The evidence on the effects of the respondent of using a wheelchair relied on by the respondent is very recent (see the prison letter of 31 August 2024 and the solicitor's witness statement of 3 October 2024).

54. Ms Nice submits that the drafter of sections 28 and 29 of the 2003 Act contemplated both appeal and remittal being dealt with swiftly after the extradition hearing. However, she says the respondent is now in the position where, three years on, the case may only be remitted if he is unsuccessful on the Article 3 issue before this court. Ms Nice says that this cannot have been in the contemplation of the drafters of the Act and would result in profound unfairness to the respondent.

55. Ms Nice submits that Westminster Magistrates' Court would be the proper forum for the interrogation and ventilation of all the relevant evidence and issues. There is, she says, nothing to stop the appellant reissuing the warrant and starting afresh, which is what, she says, happened in the case of *Iancu*.

56. For her part, Ms Hinton says that, if the appeal were allowed, the respondent would still be able to adduce evidence based on his current position in order to advance a case under section 25 of the 2003 Act.

57. I do not consider that there is a principled basis for either course of action. Ms Hinton's approach is precluded by my finding that, on the present state of the evidence -- and I emphasise that word -- the respondent's appeal cannot succeed. Ms Nice's approach would require this court to dismiss the appeal now, even though, for the reasons I have given, the appellant cannot properly said to have lost the ability to adduce evidence concerning the response of the Lithuanian authorities to the respondent's current situation. The decision to seek the letter of 16 October 2024 immediately after the hearing before me may have been ill-advised, but I am not taking that letter into account in favour of the respondent at this stage.

58. Ms Nice's submission regarding the intention of those who drafted sections 28 and 29 also loses much of its force, once one realises that a good deal of the delay in bringing this case to a hearing in the High Court has been the result of the respondent committing a serious criminal offence in this jurisdiction.

59. I therefore see no proper basis for concluding these proceedings so that, as both parties appear to agree, the necessary up-to-date evidence can in some way be analysed in Westminster Magistrates' Court. The High Court is seized of this Article 3 appeal. I find that, in order properly to adjudicate the appeal, I must, compatibly with paragraphs 94 and 95 of *Aranyosi,* seek information as to the conditions in which the respondent, given his current situation, would be held in Lithuania as a person subject to an accusation warrant.

60. This exercise should be undertaken in a way that is transparent and fair to both parties. I consider, therefore, that directions will need to be given, whereby both parties are afforded an opportunity to agree, if possible, the questions to be put to the judicial authority and that any information, such as medical reports and records that should accompany the questions, is also, if possible, agreed. Ultimately, however, a decision on the form of the questions and the materials will be for this court.

61. At the adjourned hearing, this court will consider the response, together with any evidence as to the then-existing circumstances, if necessary initially on a *de bene esse* basis.

62. I therefore grant permission to appeal and adjourn the substantive appeal. I shall hear from counsel on the next steps, including the matter of directions.

63. This concludes my judgment.

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Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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