| Neutral Citation No: [2023] NIDiv 5 | *Ref:* | McC12430 |
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| | *ICOS No:* | 20/56283/A01 |
| *Judgment: approved by the court for handing down (subject to editorial corrections)** | *Delivered:* | 26/05/2023 |

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**KING'S BENCH DIVISION**

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**ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF BELFAST**

**IN THE MATTER OF THE EXTRADITION ACT 2003**

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**BETWEEN:**

**GINTAS VENGALIS**

**Appellant:**

**and**

**REPUBLIC OF LITHUANIA**

**Respondent:**

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**BEFORE A DIVISIONAL COURT**

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**Mr Frank O'Donoghue KC and Mr Sean Devine (instructed by MSM Law) for the Appellant**
**Mr Tony McGleenan KC and Mr Stephen Ritchie (instructed by The Crown Solicitor) for the Respondent**

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**Before: McCloskey LJ, Horner LJ and McBride J**

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**McCLOSKEY LJ (*delivering the judgment of the court*)**

***Introduction***

[1] Gintas Vengalis (the "appellant"), leave to appeal having been refused by the single judge, renews his application to the plenary court whereby he seeks to challenge the judgment of Belfast County Court dated 25 November 2022 and ensuing order surrendering him to the Republic of Lithuania (the "requesting state") pursuant to a European Arrest Warrant ("EAW") issued on 9 March 2020.

***The EAW***

[2] The salient information in the EAW is the following. The appellant is described as a Lithuanian national who is now aged 46 years. The relevant offences are described as "trafficking in human beings, narcotic and psychotropic substances and legalisation of proceeds of crime." It included the distribution of heroin in "very large quantities" throughout the island of Ireland. A large number of criminal associates is identified. The appellant is given the appellation of "supervisor", together with certain others. The criminal operation also involved "street dealers", vulnerable and dependent persons said to have been trafficked from Lithuania to the island of Ireland, where they committed offences under compulsion and under the supervision of others, including the appellant. The proceeds of the offending were transmitted to Lithuania.

[3] With specific reference to the appellant, the EAW contains the following greater detail:

> "[The appellant] controlled and supervised the persons under exploitation, the so-called street dealers and was responsible for the distribution of heroin in Belfast (Northern Ireland) and other towns in Ireland. [The appellant] distributed the narcotic substance heroin directly himself and was responsible for training of the street dealers on how, where and for what prices to sell heroin … where to keep it and where to keep the money received from the sale of heroin and how to behave during detentions. They were instructed by [the appellant] to carry doses of heroin, the so-called 'balls' in their mouth so that if they were detained by the police they could swallow them, thus destroying any evidence. [The appellant] was also responsible for providing information on when a new batch of heroin was needed and for collection of money received from the sale of heroin."

The street dealers under the appellant's charge are identified. The text continues:

> "[The appellant] carried out other …. instructions in relation to the commission of criminal offences of trafficking in human beings … he either himself directly or through other persons was looking for socially vulnerable persons who could distribute heroin in the above mentioned foreign countries …."

The identities of persons said to have been recruited for trafficking by the appellant are provided. Related dates and travel details are also specified.

[4] The EAW also describes how the appellant "… legalised money that was acquired in a criminal way …" This involved transferring the proceeds of trafficking and the sale of heroin to Lithuania. The material provisions of the Criminal Code of the Republic of Lithuania are reproduced.

***The Assurances***

[5] The evidence includes two letters from the Lithuanian Ministry of Justice to the Crown Prosecution Service (the "CPS"). The first of these, dated 3 April 2020, discloses that there were two previous "guarantees" dated 7 August 2018 and 8 July 2019 respectively, relating to detention conditions in Lithuanian pertaining to persons surrendered pursuant to an EAW. Continuing, the letter adds that in light of the Covid-19 pandemic a new guarantee, substituting the previous guarantees, has been formulated.

[6] By the terms of the new guarantee the Lithuanian Ministry of Justice "hereby assures and guarantees" that the following detention conditions will be applied to all persons surrendered by the UK to Lithuania pursuant to an EAW "for the purpose of a criminal prosecution":

(i) They will be "... guaranteed a minimum space allocation of no less than 3 square metres per person and held in compliance with article 3 [ECHR]."

(ii) If detained in Siaulial Remand Prison ("SRP") they "… will only be held in the refurbished or renovated parts of the prison and in compliance with article 3 [ECHR]."

(iii) If convicted, they may be detained at SRP for a maximum of ten days during which the first and second guarantees will apply.

[7] Approximately one month later the CPS provided the Lithuanian Ministry of Justice with a report concerning prison conditions in that country, evidently prepared on behalf of a requested person in extradition proceedings in the UK. The Lithuanian response, dated 28 May 2020, provided further detail about conditions in

SRP. It stated that 40% of the 109 cells in SRP had been fully refurbished since 1 January 2019 and, further, that each detainee receives an average of 5.6 square metres living space. While the report in question is dated 29 April 2020, its author had not visited any Lithuanian place of detention since 2018. His sources of information were largely "... interviews and informal conversations mostly with inmates and detainees." The response then highlights what are said to be several misleading statements about alleged over-crowding in Lithuanian places of detention, maintaining that the total occupancy rate was then 78.8%. The response also emphasises the progressive reduction of the Lithuanian prison population and the "acceleration of improvement of material conditions of imprisonment." It ends thus:

> "… the conditions of all the Lithuanian prisons meet at least minimum international standards and persons, if surrendered to Lithuania, will be guaranteed the protection of the [ECHR]."

[8] At first instance the requesting state was asked to indicate whether the guarantees in the aforementioned two letters continued to apply. The response was affirmative. The hearing before and judgment of Belfast County Court followed.

***Other Evidence***

[9] There is a medical report of Dr Bownes, Consultant Forensic Psychiatrist, dated 9 June 2022. This begins with a major disclaimer, or qualification, arising out of the paucity of independent information available to the author. The report is based on an interview of the appellant and a review of prison medical records generated by terms of imprisonment served by him in this jurisdiction since May 2014. The report indicates that these records document various self-reported subjective symptoms – anxiety, low mood et al. There is no dating of the self-reports and no indication of relevant periods, progression or regression. Dr Bownes espouses the diagnostic formulation of adjustment reaction with prominent symptoms of anxiety and depression. There is no attempt to indicate when or during what periods this retrospective diagnosis applies. The account of medical prescriptions and supportive psychotherapeutic interventions is similarly devoid of dates and periods. The appellant had been in custody for almost two years at this stage (the EAW having been executed on 26 August 2020).

[10] Significantly, Dr Bownes confirms <u>nothing</u> of mental or psychological note since the commencement of this period of detention. This prima facie conflicts with the self-reporting by the appellant of his mental state following the commencement of this detention period. Mental state examination was entirely unremarkable. Notwithstanding, Dr Bownes, in making his retrospective diagnosis, relies on "clinical presentation at the current interview", without elaboration. The author then, having listed a series of "negative prognostic indicators", suggests that the appellant "presently fulfils a significant number of" these, without indicating which.

He repeats this in formulating his prognosis, which is that in the event of the appellant being extradited to Lithuania, the risk of attempting suicide is "more likely than not." The prison medical records which were supposedly considered by Dr Bownes have not been provided.

[11] Given the foregoing this report must be considered unsatisfactory. This court does not find it persuasive and agrees with Judge Devlin's assessment of it.

[12] Next there is a report dated 23 February 2023, of the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT"). This is based on a 10 day observations visit in December 2021. It records a history of visits to and inspections of Lithuanian police and prison establishments dating from the year 2000. It documents concerns about access to a lawyer, the privacy of medical consultations, the use of restraint beds, inter-prisoner violence, an informal prisoner hierarchy, inadequate custodial staff presence and an abundance of illegal drugs. There is a dedicated chapter in the report devoted to the topic of detention conditions in prison establishments. SRP – noted in para [7] above – does not feature in this chapter. Amongst the report's recommendations is that the programme of modernising the Lithuanian prison estate be accelerated. The delegation was informed that only 70% of the 7,200 prison places in the country is continuously occupied. The report notes some deviation from the norm of four square metres minimum cell space in certain instances. It records that all Lithuanian prisons accommodate both remand and sentenced prisoners.

[13] The appellant does not make the case that the CPT report weakens or contradicts the May 2020 assurances in any way.

[14] The evidence also includes the appellant's Lithuanian and NI criminal records. These disclose that he has been offending habitually in Lithuania, Italy, France, Ireland and NI since 2005. He has multiple convictions for theft, robbery, forgery, counterfeiting, fraud, threats to kill, assault and the supply and possession of drugs.

***At first instance***

[15] The contested inter-partes hearing was conducted on 29 September 2022. Reserved judgment was promulgated on 25 November 2022. There was neither live evidence nor affidavit evidence from the appellant. At a late stage he formally adopted a draft unsigned and unwitnessed written statement. The judgment records that his extradition was resisted on four grounds, namely (a) forum bar, (b) article 3 ECHR (unsatisfactory Lithuanian prison conditions), (c) oppression (risk of suicide) and (d) article 8(2) ECHR disproportionality.

[16] The judgment notes a robust rejection of the forum bar contention in an earlier judgment of the court, that of HHJ Miller, dated 15 March 2022. HHJ Devlin

endorsed this, noting that this ground had not been developed in argument in any event.

[17] In the next section of the judgment it is recorded that the aforementioned statement contained serious criticisms of a Lithuanian remand prison (not SRP – or any of the others documented in the CPT report) where the appellant had been detained in 2017 "upon being first extradited." Having reviewed extensively the decision of this court in *Dusecvicius v Republic of Lithuania* [2021] NIQB 70 and applying the *Soering* test, HHJ Devlin rejected the article 3 ECHR ground.

[18] Addressing the third ground of objection, the judge considered in extensive detail the report of Dr Bownes and the principles enshrined in *Turner v United States of America* [2012] EWHC 2426 (Admin), *Wolkowicz v Poland* [2013] 1 WLR 2402 and *HEM v State Attorney's Office, Düsseldorf, Germany* [2014] NICA 79. The judge concluded that a substantial risk that the appellant will commit suicide if extradited to Lithuania had not been established, with the result that the high threshold determined in *Turner* had not been overcome. While recognising that there "*might*" be some risk of future suicide, the judge highlighted (a) the current relative stability of the appellant's condition, (b) the absence of any recent or persisting identifiable noted illness, (c) the lack of any material medication or other treatment since August 2020 and (d) the non-recurrence during the previous two years of any of the previous behaviours considered to be of concern. Finally, the judge weighed the availability of preventative measures.

[19] With regard to the article 8 ECHR ground of resistance, the judge, self-directing by reference to the decision of the House of Lords in *R (Razgar) v Secretary of State for the Home Department* [2004] UKHL 27, *Norris v Government of the United States of America (No 2)* [2010] UKSC 9 at para [56] especially and *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25 at para [28], rejected this ground.

***Appeal to this court: Consideration and conclusions***

[20] The refusal of leave decision of the single judge, McFarland J, concentrates substantially on the article 3 ECHR ground of resistance. His Lordship concluded that the decision of this court in *Latvia v Kilgasts* [2022] NIQB 60 was of no assistance to the appellant, the assurances from the Lithuanian authorities were adequate, the conclusion of HHJ Devlin that the *Soering* threshold had not been overcome was unassailable and, finally, that the non-adherence to the strict two-stage *Aranyosi* procedure was a matter of no moment.

[21] It is abundantly clear from the Notice of Appeal that the only enduring ground of objection advanced by the appellant is that based on article 3 ECHR. This is confirmed by the submissions advanced on his behalf.

[22] In a compact submission, the central argument advanced by Mr O'Donoghue KC was based on certain passages of the decision of this court in *Kilgasts*. At paras [53]–[54] the court said the following of the *Aranyosi* procedure:

> "The further, related issue which must be addressed concerns the terms in which *Aranyosi* type requests for further information are formulated. This court has identified a noticeable trend whereby such requests typically seek inter alia confirmation of whether the requesting state will, in the event of the surrender of the requested person, treat him in compliance with article 3 ECHR. This is evident in *Konusenko*, *Danfelds* and the present case. We refer also to the passage in the letter transmitted in the present case reproduced in para [22] above.
>
> …
>
> We would question the wisdom and utility of requests formulated in such terms. They do not appear to be compatible with the *Aranyosi* decision. There the CJEU stated that such requests should seek the provision of "all necessary supplementary information on the condition on which it is envisaged that the individual concerned will be detained in that Member State": see paras [95]-[97]. This is required in order to make the necessary "specific and precise" assessment of whether there are substantial grounds for believing that the requested person will be exposed to the relevant risk on account of his envisaged detention conditions in the requesting state: see paras [92]-[93]. Furthermore, the juridical starting point entailing a presumption of compliance with article 3 ECHR - at least in Framework Decision cases - militates still further against the transmission of a general request seeking a general assurance that the requesting state will comply with its relevant legal obligations."

[23] The criticism of the first instance court's request for further information, noted at para [8] above, is twofold, namely (a) it lacked the specificity exhorted in *Kilgasts* and (b) it failed to simply replicate the draft furnished by counsel (Mr Devine).

[24] The decision of this court in *Dusevicius* was promulgated on 24 June 2021. There the article 3 challenge failed, inter alia, because this court considered that reliance could be placed on the Latvian letters of assurance of 3 April 2020 and 28 May 2020, reproduced in paras [6]–[7] above. The court stated at [2021] NIQB 70, para [148]:

> "The case of this appellant, whose extradition is sought qua suspected offender, stands in contrast. The court's evaluation of the short to medium term foreseeable consequences of surrendering this appellant to Lithuania is straightforward. Having regard to all of the information available, the court has no reason to question the Lithuanian authorities' assurances relating to the prison conditions and facilities which will apply to this appellant for as long as he retains the status of remand prisoner. This will be his status immediately upon surrender and this status will continue for an immeasurable period thereafter. Those assurances adequately address all aspects of the appellant's article 3 ECHR/Article 4 CFR case."

This theme also emerges in para [152]:

> "… if surrendered to Lithuanian this appellant, as a matter of high probability, will be accommodated in remand prisoner's detention conditions in respect whereof appropriate human rights compliance assurances have been provided by the Lithuanian authorities and will remain thus accommodated for some considerable time. This applies to all aspects of his article 3 ECHR case."

[25] Almost one year later, in May 2022, Belfast County Court made the assessment that updated confirmation of the continuing validity of the Latvian assurances should be sought. The preference of the appellant's legal representatives, as is evident from a draft letter which they composed at that time, was for a request for further information in more elaborate terms. The judge opted for a simpler, more concise mechanism. We consider that in so doing he acted within the boundaries of the discretion available to him. Furthermore, the response provided did not exist in isolation. Rather it merged with the April and May 2020 letters of assurance. The judge in effect posed all of the questions which would have been appropriate in eliciting the information contained in those two letters. Properly analysed, therefore, this was not, in the language of *Kilgasts*, a general request seeking to elicit a general assurance of compliance with the State's legal obligations. It was, rather, an entirely appropriate request, framed in suitably economical and direct terms, considered in the full context to which it belonged, and which was effective to secure protection of the appellant's article 3 rights. Furthermore, it had the shining merit that it left the requesting State with no wriggle room.

[26] We would add the following. HHJ Devlin considered that the decision of this court in *Dusevicius* was binding on him. He was correct to do so. It is important to highlight that this is so because the relevant article 3 ECHR evidential matrix is/was

identical in both cases. The judge's decision to request the updated assurance was a generous one, given the frailties of the material on which it was based, namely the appellant's unsworn statement, considered in para [15] above. It is timely to emphasise the test to be applied at "*Aranyosyi* Stage 1", as spelled out in *Kilgasts*, paras [51]–[52]:

> "… The transmission of an *Aranyosi* type letter - now pursuant to Article 613 of TCA - can never be a matter of course or routine. This flows from the prescriptive terms of the jurisprudence of the CJEU. By virtue of these in every case where the question of transmitting an *Aranyosi* type letter arises -whether at the instigation of a party or on the court's own initiative - a judicial assessment and determination are required. The court must determine whether there exists objective, reliable, specific and properly updated evidence demonstrating a real risk of exposure of the requested person to inhuman or degrading treatment in the event of surrender to the requesting state. If the court of the requested states determines that there is such a risk, it must invoke the Article 613 TCA procedure: and the converse applies fully.
> …
>
> This court considers that the process required of the first instance court should be of the typical, conventional kind. It will entail considering the available evidence, the parties' arguments and any proposed letter in draft. While this will not necessarily entail an oral hearing in every case, attention to the principle of open justice will be required. The court will then make its decision. A focused and reasoned text, accompanied by the appropriate order, should follow. This will convey to the parties (and, in the event of later appeal, to this court) whether there are any indications of error of law and will also enable further informed representations to the first instance court to be made where considered appropriate. If the decision of the court is to transmit an Article 613 TCA request to the relevant agency of the requesting state it would be preferable to incorporate the terms thereof in the body of the decision or as an appendix thereto or as an appendix to the court's order."

First instance extradition judges should be alert to the factor of the passage of time in every case where the evidence includes assurances of the type found in the present litigation matrix. They should simultaneously bear in mind the high level of mutual

trust and confidence which is the cornerstone of the extradition system established by the Framework Decision.

[27] For the foregoing reasons this court considers the second element of the appellant's article 3 challenge to be without merit.

***Conclusion***

[28] For the reasons given, the renewed application for leave to appeal is dismissed and the decision of Belfast County Court affirmed.