

Case No: CO/5183/2017

Neutral Citation Number: [2018] EWHC 2691 (Admin)

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/10/2018

Before :

LORD JUSTICE HICKINBOTTOM
and
MR JUSTICE DINGEMANS

Between :

	Guy Jane	<u>Appellant</u>
	- and -	
	Prosecutor General's Office, Lithuania	<u>Respondent</u>

Mark Summers QC and Mary Westcott (instructed by **Dalton Holmes Gray Solicitors**) for
the **Appellant**

James Hines QC (instructed by **the Crown Prosecution Service**) for the **Respondent**

Hearing date: 27th September 2018

Judgment Mr Justice Dingemans:

Introduction

1. On 25 April 2018 Hickinbottom LJ and I sat as a Divisional Court, and heard an appeal against the Order of Deputy Senior District Judge Ikram (“the DSDJ”) dated 3 November 2017. The DSDJ had ordered that the Appellant Guy Jane (“Mr Jane”) should be extradited to Lithuania to face a trial for alleged criminal conduct. For the

reasons contained in our judgments dated 15 May 2018 ([2018] EWHC 1122 (Admin)), we found that: (1) there was a real risk that Mr Jane would be subjected to treatment contrary to the right in article 3 of the European Convention on Human Rights (“ECHR”) by reason of conditions in the Lukiskes remand prison, which the evidence showed was where he was likely to be held in custody on remand; (2) it was appropriate to give the Lithuanian authorities an opportunity to consider whether to provide an assurance sufficient to dispel the real risk of impermissible treatment. The appeal was stayed to give Lithuania an opportunity to provide suitable assurances.

2. After that judgment seven further assurances, in addition to assurances which had been provided in the course of the proceedings, were provided on behalf of the Prosecutor General’s Office in Lithuania between 21 and 26 June 2018. It was submitted on behalf of Mr Jane, but disputed by the Prosecutor General’s Office in Lithuania, that the assurances did not dispel the relevant risk. The matter was set down for hearing on 31 July 2018 but the parties were inadvertently notified that the hearing was for directions only. This meant that neither Mr Summers QC nor Mr Hines QC were available for the hearing, and it was necessary to adjourn the hearing until Thursday 27 September 2018. Following the adjournment on 31 July 2018 the Prosecutor General’s Office in Lithuania provided a further assurance dated 7 August 2018, but there remained a dispute between the parties about whether the assurances were sufficient to dispel the real risk of impermissible treatment to Mr Jane.

The assurance dated 7 August 2018

3. It was common ground between the parties that the assurance dated 7 August 2018 was the relevant assurance, on the basis that, if that assurance did not dispel the real risk of impermissible treatment, then the seven earlier assurances would not do so. It was also common ground that the assurance dated 7 August 2018 needed to be considered in the light of all the relevant evidence and the previous assurances.
4. The assurance dated 7 August 2018 was given by the Prison Department of the Ministry of Justice of the Republic of Lithuania. It provides:

“The Director General of the Prison Department under the Ministry of Justice of the Republic of Lithuania hereby assures and guarantees that the below stated conditions will be applied to all persons surrendered to the Republic of Lithuania from the United Kingdom on the grounds of the European Arrest Warrant (“EAW”) for the purpose of a criminal prosecution or execution of a sentence of imprisonment during their detention.

1. All persons surrendered under an accusation warrant from the United Kingdom will be held in Kaunas Remand Prison, Lukiskes Remand Prison – Closed prison or Siauliai Remand Prison, whereby they will be guaranteed 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.

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 Lukiskes Remand Prison – Closed Prison or Siauliai 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.”

Issues about the assurance

5. Mr Summers QC on behalf of Mr Jane submitted that the assurances were not sufficient because: (1) it was apparent that Lithuania considered that the conditions in Lukiskes were compliant with the ECHR, when the court had determined that there was a real risk of impermissible treatment; (2) that Mr Jane might be held in Siauliai where there was less evidence about the effect of the cell renovations; (3) that the assurance dated 7 August 2018 was vague and unspecific and given that the evidence showed that many cells had been renovated over a long period of time, remand in a renovated cell might still give rise to a real risk of impermissible treatment.
6. Mr Hines QC on behalf of the Prosecutor General’s Office submitted that: (1) Lithuania had not ignored the judgment of this Court and had responded appropriately to the judgment and points taken on behalf of Mr Jane in relation to the seven assurances; (2) that Mr Jane was likely to be held in Lukiskes; (3) the assurance was sufficiently specific, that there was no proper criticism to be made about the renovated cells, and there was no real risk of impermissible treatment.

Further case law on assurances

7. The relevant principles applicable to proposed assurances in the extradition context were summarised in our earlier judgments, and it is not necessary to repeat them here. Since that date the Divisional Court has given judgment in *Giese v Government of the United States of America* [2018] EWHC 1480 (Admin); [2018] 4 WLR 103. At paragraph 38 Lord Burnett LCJ said “whilst there may be states whose assurances should be viewed through the lens of a technical analysis of the words used and suspicion that they will do everything possible to wriggle out of them, that is not appropriate when dealing with friendly foreign governments of states governed by the rule of law where the expectation is that promises given will be kept”. Lithuania, as a fellow Member State of the

European Union, is a friendly foreign government.

8. The First Chamber of the Court of Justice of the European Union (“CJEU”) has also recently (25 July 2018) given judgment in *ML (Generalstaatsanwaltschaft Bremen)* [2018] EUECJ C-220/18PPU. In *ML* the CJEU addressed a number of questions addressed by the Higher Regional Court in Bremen, Germany arising out of a proposed extradition to Hungary. Issues of the prison conditions in which the extradited person would be kept in Hungary arose. The CJEU confirmed the fundamental principle of mutual trust between Member States (which applies to the United Kingdom and Lithuania) and the starting consideration is that each Member State will comply with its obligations in accordance with EU principles. It was noted however that where there is information of a real risk that an extradited person will be subjected to inhuman or degrading treatment by reason of prison conditions, the judicial authority of the requested state has to assess that risk. In order to do that, the executing judicial authority is required to assess conditions in the prisons in which it is likely that the person would be detained. That task requires an assessment of where the requested person is likely to be held and a careful consideration of all the evidence about the relevant conditions of detention.
9. In paragraphs 108 to 117 of *ML* the CJEU considered extradition assurances. Where an assurance is “given, or at least endorsed, by the issuing judicial authority ... the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities ... must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre” infringe the relevant protections against inhuman or degrading treatment (paragraph 112). In such a case, or if the assurance has not been provided or endorsed by the issuing judicial authority, the executing judicial authority must carry out “an overall assessment of all the information available to it”.
10. Mr Summers QC, on behalf of Mr Jane, referring to paragraphs 62 and 63 of *ML*, submitted that the assurance “must” specify the prison in which the requested person would be detained. In fact that part of the judgment is directed to ascertaining where the requested person was likely to be held, so that the Court can determine whether there was a real risk of impermissible treatment. That was the process which was undertaken by this Court in the hearing in May 2018 and in the earlier judgments. The task of this court now is to assess the adequacy of the assurance in the light of all the information available to it.

Lithuania has not ignored the judgment of the Court

11. It is apparent from the reports from the European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment (“CPT”) that while there remains a real risk of impermissible treatment in remand prisons other than Kaunas, Lithuania continues to make considerable efforts to improve conditions in its remand

prisons. The evidence of the further seven assurances, and the assurance dated 7 August 2018, show that Lithuania has engaged with the issues raised by this Court about the real risk of impermissible treatment of Mr Jane. It is now for this Court to assess whether the assurance dated 7 August 2018 removes any real risk of impermissible treatment if Mr Jane were to be extradited.

Mr Jane likely to be held in Lukiskes

12. This Court undertook the consideration of the evidence relating to where Mr Jane was likely to be held, and the conditions of imprisonment at that location, in its judgments dated 15 May 2018. It was determined that Mr Jane would be likely to be held in Lukiskes (see paragraph 30). That finding was based on expert and other evidence about where Mr Jane was likely to be kept on remand, and included evidence about the likely location of the trial.
13. There is nothing in the further materials before this Court which undermines the conclusion that Mr Jane is likely to be held in Lukiskes, although the fact that it is likely that Mr Jane will be held in Lukiskes cannot exclude the possibility that he may be held elsewhere. The assurance dated 7 August 2018 is in general terms: Mr Hines indicated on instructions that it is intended to be used in all future extradition requests by Lithuania. Therefore: although it refers to Kaunas, it is common ground that there would be no real risk of impermissible treatment in Kaunas; and although it refers to Siauliai, where there was less evidence that the assurances dispelled any real risk of impermissible treatment, it is not likely that Mr Jane will be held there.

No real risk of impermissible treatment of Mr Jane in Lukiskes remand prison in the light of the assurance dated 7 August 2018

14. Both Mr Summers and Mr Hines referred to evidence which was before the Court at the hearing in April 2018. This included the judgment of the European Court of Human Rights (“ECtHR”) in *Mironovas and others v Lithuania* [2015] ECtHR 1074 and the CPT reports of 2009, 2014 and 2018. We were also reminded of the expert evidence about judgments in Lithuania identifying prison conditions which infringed the provisions of article 3 of the ECHR.
15. In addition reference was made to the judgement of the ECtHR, Fourth Section, in *Scensnovicius v Lithuania* (Application No. 62663/13) dated 10 July 2018, which post-dated the judgment of this Court on 15 May 2018. This related to conditions in Lukiskes in 2013. There had been complaints of overcrowding (see paragraph 52). The applicant in that case had brought proceedings in the courts in Lithuania and an award of damages had been made, but a further award was made by the ECtHR. The case identified other complaints made by the applicant in that case which were about cells which were cold and humid in the winter and hot in the summer, insufficient light and ventilation, the presence of parasites and insufficient time outside. Lithuania had admitted that the cells

had been overcrowded, but rejected the other complaints and relied on the fact that the applicant had been held in renovated cells. The European Court of Human Rights, at paragraph 76, referred to the CPT reports which had referred to overcrowding, the extent of which varied around the prison, and dilapidated and dirty cells, insufficient heating in winter and poor ventilation. The Court found that the applicant had suffered overcrowding (see paragraphs 77 to 80), and noted that time outside the cell could not compensate for crowding in the cell.

16. The judgment in *Scensnovicius* relied on the report of the CPT, and related to conditions in 2013. The most up to date evidence is the 2018 CPT Report, which related to an inspection in 2016, and the expert evidence about the judgments relating to prison conditions in Lithuania. The 2018 CPT report, together with the response to that report from the authorities in Lithuania, expressly identifies continuing problems with unrenovated cells, even with the reduction of numbers of prisoners. That CPT report was referred to in paragraph 36 of the judgment of this Court dated 15 May 2018, and formed part of the assessment that there remained a real risk of impermissible treatment of Mr Jane. However it should be noted that the 2018 CPT report referred to the renovations and did not identify any failings in the renovated cells.
17. Mr Summers noted that the assurance in this case did not give precise dimensions of nor a description of the cell in which Mr Jane would be held, and pointed to the absence of photographs. Mr Hines submitted that the assurance was sufficient. As noted above the assurance dated 7 August 2018 makes it plain that Mr Jane will be held in a cell with sufficient space but goes on to provide that Mr Jane “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”.
18. In my judgment, the assurance dated 7 August 2018 is not impermissibly vague insofar as it relates to Lukiskes. One way of providing an assurance is to identify the actual cell or cells in which a person will be held, with relevant descriptions and even photographs. Such an approach is particularly helpful to the court, and is usually sufficient to avoid all issues about the adequacy of the assurance. The assurance dated 7 August 2018 is not in that form; but it makes clear that Mr Jane will not be subjected to overcrowding which had been the main problem at Lukiskes. Further, the assurance provides that Mr Jane will be held in a refurbished or renovated part of the prison. The 2018 CPT report does not suggest that the complaints about heating, humidity and hygiene in relation to Lukiskes have been directed to any renovated part of the prison.
19. In these circumstances, and having regard to all of the information available to this Court about Lukiskes, in my judgment the terms of this assurance are sufficient to show that there will be no real risk that Mr Jane will be subjected to impermissible treatment in Lukiskes prison where he is likely to be held on remand. In all of the circumstances, given the trust to be accorded to Lithuania, I am satisfied that, even though it is possible but unlikely that Mr Jane will be detained in a prison other than Lukiskes, there is no real risk of him suffering impermissible treatment if extradited on the basis of the assurances

given.

20. For those reasons, subject to my Lord Hickinbottom LJ, I would dismiss this appeal.

Lord Justice Hickinbottom :

21. I agree that this appeal should be dismissed for the reasons given by Dingemans J.