Neutral Citation Number: [2019] EWHC 2991 (Admin)

Case No: CO/645/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
In the matter of an appeal under s.26 of the Extradition Act 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 November 2019

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

- -

Between :

AB **Applicant**

- and –

A Lithuanian Judicial Authority **Respondent**

- -
- -

Saoirse Townshend (instructed by **Oracle Solicitors**) for the **Applicant**
Hannah Hinton (instructed by **the CPS**) for the **Respondent**

Hearing date: 15 October 2019

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Approved Judgment

Mr Justice Supperstone:

Introduction

1. The Applicant ("AB") applies for permission to appeal against the decision of District Judge Baraitser of 8 February 2019 to order her extradition to Lithuania.

2. The sole ground of appeal is that the District Judge ("DJ") was wrong in her conclusion that extradition was a proportionate interference with the right to private and family life of the Applicant and her three children, pursuant to s.21A of the Extradition Act 2003 ("the Act") and Article 8 ECHR.

3. On 8 July 2019 Sir Wyn Williams, sitting as a High Court Judge, ordered that the application for permission be adjourned to be listed in court as a "rolled-up hearing".

The European Arrest Warrant

4. The Applicant is a Lithuanian national. She is sought pursuant to an accusation European Arrest Warrant ("EAW") issued by the Prosecutor General's Office in Lithuania ("The Respondent") on 13 June 2018. The EAW was certified by the National Crime Agency on 18 June 2018. The judicial authority seeks the Applicant's return for 21 offences of forgery and fraud allegedly committed between February 2017 and March 2018. In summary the Applicant, acting with others as part of a conspiracy, is said to have used computer software to create false documents which she subsequently used in order to carry out various frauds. It is alleged that various forged documents produced or obtained by the Applicant were sent by her from the UK to an intermediary in Lithuania for the purposes of the sale of real estate belonging to her father. The funds from the sale of these properties were received by her into a UK Barclay's account. The alleged value of the fraud has been calculated to be in the total value of around £350,000 (see EAW, Box E; and judgment of DJ at paras 5, 73 and 96). In addition to the fraud and forgery allegations it is alleged that the Applicant sought to place undue pressure upon a witness during the pre-trial investigation to withhold truthful evidence from investigators. The twenty-first allegation is one of perverting the course of justice. The maximum sentences for these offences are between 2 and 8 years.

The judgment of the District Judge

5. The Applicant gave evidence. She was born on 5 June 1987. She has three children, B (born 22 January 2004), C (born 30 September 2008) and D (born 15 November 2013). The Applicant was 16 when B was born. She was living at the time in Lithuania with her mother, who was working as a midwife. She had separated from the fathers of C and D by the time they were born. The children do not share the same fathers and none have contact with them. The Applicant came to the UK in May 2012. Her mother ("M") and the children joined her in September 2012. She worked on a self-employed basis as a stylist and make-up artist.

6. M gave evidence. She is 57 years old (born 19 February 1962). She stated that since 29 October 2018 she has lived in King's Lynn with her new partner. She said that if her daughter is extradited she will move back to London to care for her grandchildren (para 35(f)). Paragraphs 37 and 38 of the judgment record M's evidence:

> "37. M stated that if her daughter were extradited she would have to change her life again; change her accommodation; look for a new job; and she would no longer be able to live with her partner as he has worked in King's Lynn for 17 years and would be unlikely to move. She stated she would have to work whilst the children were at school and would receive only a limited income. It would be very hard to cope with work and taking care of the three children. She also stated she has Type 2 diabetes and was concerned that stress would affect her health.
>
> 38. She stated: 'however it doesn't matter what is going to happen I would not leave my grandchildren alone' (paragraph 4 addendum report)."

7. Paragraphs 41-49 of the judgment refer to the CYPS Single Assessment Report of Ms Tiara Maroof dated 24 August 2018, prepared on behalf of the Newham Children's Social Care services ("CSC"). In addition to the Applicant, her three children and M, contributors to the assessment are named as AC (mother's first cousin), and SG (family friend). Ms Maroof noted that "all the children speak Lithuanian and English" (page 19). B is bilingual and D has been attending a Lithuanian private nursery (page 11). In relation to plans for the care of the children the judgment (at para 46) records:

> "The maternal grandmother, [M], will be caring for the children if she [the Applicant] was to be extradited back to Lithuania" (page 12).

M has been clear that she has no plans to leave the children with anyone else or return back to Lithuania (page 14). If she does return to Lithuania she would take the children with her. If the Applicant is imprisoned she reports she will continue to care for them until her release.

8. The judgment continues:

> "47. In relation to [M]:
>
> (a) She has the ability to meet the basic care needs of the children as she cared for them during [the Applicant's] detention (on remand pending a successful application for bail).
>
> (b) During this period [M] was taking the children to school, tending to their personal care, providing them with balanced meals and providing a safe home environment.
>
> …
>
> (g) She loves her grandchildren very much and wants to be there for them when their mother cannot be. She is able to give them affection, love and encouragement. …"

9. The DJ noted (at para 50) that an e-mail dated 8 January 2019 from Anna Fair, Executive Assistant on behalf of Grainne Siggins, Executive Director, Strategic Commissioning, London Borough of Newham, includes the following:

> "If the grandmother were to become the children's primary carer, she would derive the right to reside in the UK from them, for as long as at least one remained in education. On that basis, she should be entitled to benefits, Housing Benefit, (depending on the nature of any tenancy), Council Tax Reduction and Universal Credit. She would also be eligible to be considered under homelessness provisions."

10. The DJ, in setting out her findings in relation to the Article 8 issue, noted that "M has stated unequivocally that she would not leave her grandchildren and will care for them no matter what happens (paragraph 4 addendum statement of [M])" (para 90). The DJ further noted that "She is a relatively young grandmother at 56 years old and has cared for all three children, alone, recently. On the assessment of Ms Maroof, this period of caring was successful" (para 91).

11. At paragraphs 100-101 of her judgment the DJ set out the competing interests in favour of and against extradition. The DJ said:

> "100. In the balance in favour of extradition, I take account of these factors:
>
> - The weighty requirement on the UK to fulfil obligations under the EAW scheme.
>
> - Mutual confidence and respect for the decisions of the judicial authority.
>
> - The constant and weighty public interest in extradition.
>
> - [The Applicant]'s mother, [M], has agreed to care for her three children for the period of her absence from the UK. They will be looked after by a close relative who loves them and would do anything to help and support them.
>
> - If need be, the British State will provide for [M], as the sole carer of three children, with the benefits appropriate to her needs.
>
> - The length of time [the Applicant] will be absent from her children is not known. She is entitled to make applications for bail to the Lithuanian courts which will take all of her circumstances into account. If she is convicted it is open to the Lithuanian courts to impose a suspended prison sentence. Ordinarily

the interests of children will be taken into account in making these decisions.

- Medical assistance, including psychiatric and psychological intervention is likely to be available to both M and B, should they need it.

- The allegations are serious, in particular in light of the value of this fraud.

- The allegations are recent. There has been no delay in this request for [the Applicant's] removal.

- [The Applicant's] current circumstances are very similar to those which existed when these offences are said to have been committed.

101. In the balance for the Requested Person, I take account of these factors:

- [The Applicant] has a settled life in the UK. She has lived here since 2012.

- Extradition and consequent separation is likely to be psychologically detrimental to [the Applicant], her mother and her children.

- Two of the children are still young and one is within the 'critical period' of child-parent attachment, considered to be between six months and five years' old.

- The eldest child has shown signs of ongoing psychological stress which has included self-harm.

- The circumstances in which M may need to care for these children may be considerably harsher than they currently experience.

- M's symptomology may increase to a formal diagnosis of depression and anxiety develop into an anxiety disorder if she is left to care for the children. This would impact on her ability to care for them by herself.

- [The Applicant] is not a fugitive from justice.

- [The Applicant] has no convictions either in the UK or in Lithuania.

12. At paragraph 102 the DJ states:

> "I have taken account of these competing considerations in order to determine whether the public interest in extradition outweighs the interference with the Article 8 rights of Ms AB and her family. In my judgment, although there are compelling features in the balance against discharge, set out above, these do not override the strong public interest in this case in extradition, again in light of all the factors set out above. I am satisfied that Ms AB's extradition remains proportionate and necessary."

13. The DJ next, at paragraphs 103-107 considered whether, under s.21A(1)(b) of the Act, extradition would be proportionate. She concluded (at paragraph 107) that in her view it would not be disproportionate to the criminal conduct in which the Applicant is said to have been engaged.

Applications to admit fresh evidence

14. On 7 March 2019 the Applicant applied to adduce fresh evidence on appeal by way of:

    i) A second addendum proof of evidence of the Applicant dated 7 March 2019, with Exhibit "JS4"; and

    ii) An addendum psychological report ("the second report") of Dr Sonia Borghino dated 3 March 2019. (Dr Borghino's first report dated 20 September 2018 had been before the DJ: see Judgment, paras 54-59).

15. On 8 July 2019 Sir Wyn Williams ordered that the judge hearing the appeal determine the admissibility of this evidence.

16. On 5 August 2019 the Applicant applied to admit further evidence, namely (1) a third addendum proof of evidence of the Applicant dated 24 July 2019 with exhibits which included medical records pertaining to B's self-harm, and medical notes proving that the Applicant was pregnant; and a second addendum witness statement of the Applicant's mother, M dated 29 July 2019. In addition the Applicant applied to extend the Representation Order to cover the cost of the second addendum report of Dr Borghino regarding the effect of separation at birth on both the Applicant and the prospective baby; and a request that Newham social services provide an updated s.7 report on what the plan is for the children, if the Applicant is extradited (due to the fact that M had after the decision of the DJ said that she was unable to care for the children, as to which see below).

17. On 30 August 2019 Sir Ross Cranston, sitting as a judge of the High Court, made the following order:

> "1. The application by the Applicant dated 5 August 2019 is refused except in relation to the medical notes proving pregnancy.
>
> 2. The application by the Respondent dated 19 August 2019 is allowed. [The Respondent had applied to be allowed an

> opportunity to admit evidence of mother and baby units in response to the Applicant's evidence that she was now pregnant]
>
> 3. The Respondent is allowed to rely on evidence in response to the medical evidence showing Ms AB is due to give birth next spring, which is to be filed and served no later than 4pm on 24 September 2019.
>
> 4. The order of Sir Wyn Williams in relation to the application of 8 March 2019 to adduce fresh evidence remains in force."

18. The Applicant renews her application to adduce fresh evidence of 2 August 2019 to the extent that it was refused by Sir Ross Cranston.

19. During the course of submissions to me I stated that I would admit the documents that were the subject of the application to Sir Wyn Williams, and the third addendum proof of evidence of the Applicant dated 24 July 2019 and the second addendum witness statement of M which Sir Ross Cranston had refused to admit in evidence. I took the view that in the case of an alleged breach of the Article 8 rights of the Applicant and her children, in particular her elder daughter, it is important that the court has before it the most up-to-date information relevant to the issue to be determined.

Grounds of appeal

20. Ms Saoirse Townshend, for the Applicant, submits that the DJ was wrong to conclude that extradition would not be a disproportionate interference with the Applicant and her three children's right to private and family life pursuant to s.21A of the Act (Article 8 ECHR) for the following reasons:

    i) The judge took in to consideration two irrelevant factors, namely the lack of delay and that the Applicant's circumstances have not changed since the alleged crimes were committed, when weighing in the scales in favour of extradition (para 100). (**Ground 1**)

    ii) The judge was wrong to find the unknown length of time that the Applicant is absent from her children to be a factor in favour of extradition (para 100). (**Ground 2**)

    iii) The judge failed to consider the effect of extradition on the Applicant's mental health, particularly the effect of being separated from her three children. (**Ground 3**)

    iv) The clear and acutely detrimental impact of extradition on the children was given insufficient weight, especially since the expert evidence of Dr Borghino regarding this impact was not challenged. Furthermore Dr Borghino's addendum report demonstrates the unfortunate decline in B's mental health since the extradition hearing, with Dr Borghino currently assessing her to be "at high risk of self-harming or attempting suicide" in the event that her mother is extradited (Dr Borghino 2, second report at para 11.15). (**Ground 4)**

v) The finding that the children will be cared for by the Applicant's mother, M, in the Applicant's absence, has been fatally undermined by the fresh evidence (M's second addendum witness statement and Dr Borghino's second report) since she is now unwilling and unable to care for the children. Therefore, the likelihood is that the children will go into Social Services care. Alternatively, if the fresh evidence concerning M's inability to care for the children is not admitted, the Applicant submits that the judge did not place sufficient weight on the quality of care that the children would be provided by M. (**Ground 5**)

vi) Taking into consideration the fresh evidence regarding the Applicant's pregnancy it would not be in the children's best interests for them to grow up apart. Extradition would cause the children (including the Applicant's new baby, due in March 2020) to be deprived of the opportunity to live as a family and grow up as siblings. (**Ground 6**)

The legal framework

21. The legal principles relating to Article 8 are well known and were not in issue. Ms Townshend referred to the Supreme Court decision in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25 (and in particular to paras 7, 8, 15, 33, 34, 98, 144 and 146). (See also *R (DA) v Secretary of State for Work and Pensions* [2019] UKSC 21, per Lord Wilson at para 68-69 on the concept of the best interests of the child in Article 3.1 of the UN Convention on the Rights of the Child 1989 ("the UNCRC"). Article 8 requires an assessment of the impact of extradition on the family unit as a whole (see *Beoku-Betts v Secretary of State for the Home Department* [2009] 1 AC 115 at para 21; and *PA v Criminal Court Coimbra, Portugal* [2017] EWHC 331 (Admin)).

The parties' submissions and discussion

22. Unsurprisingly, at the forefront of Ms Townshend's submissions was the submission that the finding that the children will be cared for by the Applicant's mother in the Applicant's absence has been "fatally undermined" by M's statement that she is now unwilling and unable to care for the children (**Ground 5**). Therefore, the likelihood, she submits, is that the children will go into Social Services care.

23. In support of this submission Ms Townshend relies upon the second addendum witness statement of M dated 29 July 2019. It is necessary to set out the contents of this statement in their entirety. M states:

> "1. I would not be able to look after my three grandchildren, if [the Applicant] (my daughter) was extradited for the following reasons:
>
> a) My health has deteriorated. In addition to diabetes and high blood [pressure] I now suffer from hip pain. I had seen a doctor, but I need to go back next week. I may need a hip replacement surgery. I suffer from very severe pain everyday, it restricts my movements and I drink very serious pain killers every day called Diclak; 150mg, which is the maximum dose. I also take regular medication for my diabetes and high blood

> pressure. Irrespective of the medicine that I take, I still feel very week and when there is any change of weather conditions I feel unbearable pain in my hip.
>
> b) At present I have very low income of £80.00 a week, because I only work two days a week as a cleaner. Also I only worked during summer season – I cleaned caravans by the sea. This is only a seasonal work and will end in September 2019. This job really affected by hip pain and affected my diabetes and high blood pressure condition. I think I will not be able to find another job once this finishes on September 2019, because of my poor health condition, my poor English language, my age, I am not able to drive, I am not able to work at nights.
>
> c) I have established my private life in Kings Lynn now with my new partner [AS], who was my first love at a primary school in Lithuania. We are now together for one year and we get on very well. We want to continue living together till the end of our days. But we would not be able to look after three children as we would not be able to support them financially. My partner [AS] accommodates me. He has council flat where he lives his daughter, granddaughter and nephew. So there are already 5 people living in the flat. It is 3 bedroom flat that my partner shares with his family and me. There is certainly no space here for further three children.
>
> 2. [The Applicant] came to visit me with three children for two nights and in two nights it proved how it was not possible to accommodate all people in such a small flat. It was exceptionally inconvenient and unbearable. This house has only one shower and one toilet already shared by 5 people.
>
> 3. I love my grandchildren and I would love to be able to look after them. This is why I said in the past that I want to look after them. That has not changed I would love to look after them, but I simply cannot figure out how to. The reality is such, that given my serious health issues, my new private life with my partner AS, my financial and emotional dependency on AS, I would not be able to move to London to look after the children and I cannot receive children at Kings Lynn as this would destroy my private life which I struggled to built and now that I finally built it I cannot lose it."

24. Sir Ross Cranston, refusing to admit this (and other) evidence, stated:

> "These applications all seek to make good the case which the Applicant lost at the hearing. In particular the clear evidence before the judge from the grandmother was that she would look after the children and the judge in a careful and thorough decision made a finding about the adequacy of her care. The new statements, the amendments to the section 7 report are all

> designed to undermine that finding. The statements are self-serving and their makers would not be subject to cross-examination at the hearing. …"

25. The Respondent submits the Applicant, having lost in the court below, now seeks to make a new case in the appeal in an attempt to reach a different outcome.

26. I agree with this observation. The evidence of M was unequivocal (see para 6 above). It was repeated to professional persons (see para 7 above) and to the court in the clearest terms. It is plain, as one would expect, that careful consideration was given by her as to whether, having regard to her personal circumstances, she would be able to take on this heavy responsibility.

27. I do not consider that the reasons that are now given for her change of mind adequately explain why she is not now prepared to do what, after mature consideration over a lengthy period of time, she had confirmed to the DJ that she would do.

28. The first reason given by M as to why she is not able to look after her three grandchildren is, she says, that her health has deteriorated. She says she now suffers from hip pain, that she had seen a doctor but that she needs to go back "next week" and may need a hip replacement surgery. In her evidence at the hearing (and in her earlier statements) she made no reference to hip pain. There was no medical evidence confirming this new condition.

29. The second reason relates to her "very low income". She seems to suggest that her job cleaning caravans by the sea during the summer season was "really affected by hip pain". Again, no mention was made of this previously. In any event, benefits will be provided, as the DJ noted (see para 9 above), to enable her financially to look after her grandchildren.

30. As for the third reason, namely her private life in King's Lynn with her new partner, she says nothing that was not known at the time she said that she would look after her grandchildren in the event of her daughter's extradition. She appreciated then that she would have to move to London to look after them. She points to no change in circumstances. I agree with Ms Hinton that no reason has been provided as to why she might be less committed to take over the children's care than she was previously.

31. Dr Borghino's second report of 3 March 2019 is based on interviews that she conducted with the Applicant, her mother and the children between 17 and 27 February 2019. She says that she interviewed M on 21 February 2019 on the telephone with the aid of an interpreter and that she spoke to her again on 27 February 2019 (see para 10 of the report). M said that "she still feels anxious, depressed, stressed, and she misses the children. She described having problems with blood pressure and diabetes…" (para 10.13). She also said that she is currently taking medication for anxiety (para 10.15). She makes no mention of any hip problem. Dr Borghino's report really takes the matter no further. She records what she is told by M.

32. On 25 October 2019 (after I reserved judgment on 15 October 2019) the Applicant made a further application to adduce fresh evidence. Ms Townshend in her written

application noted that "The Court correctly commented that medical evidence of a worsening condition had not been adduced by the Applicant" (para 2), and stated that since the hearing new medical evidence has come to light concerning M's medical condition which, she submits, demonstrates the veracity of M's evidence on this point. In an addendum proof of evidence the Applicant sets out the difficulties she had in obtaining medical evidence in time for the Appeal hearing from M's General Practitioner's surgery.

33. The Applicant applies to adduce the following documents by way of fresh evidence: (i) Addendum proof of evidence of the Applicant dated 25 October 2019 explaining the reason for the lateness of this evidence; and (ii) medical evidence which includes: M's medical records; 5 September 2018 "EMIS MSK Referral form"; 10 September 2019; "West Norfolk CCG: MSK CPoA and Triage Service; and 10 September 2019: "Radiology Referral".

34. The Respondent opposes their admission on grounds which include the following: M's witness statement stating that she suffers increased hip pain is dated 29 July 2019 (see para 23 above), but the Applicant did not request M's medical records until 10 September 2019. The Surgery indicated it would supply the records within 28 days, yet there was no application to adjourn the appeal to await the records.

35. Nevertheless, having regard to the Applicant's contention that her mother genuinely suffers from medical issues which make it extremely difficult to care for the three children, particularly the youngest aged five and noting as the Respondent does, that it is the parts of the records post-dating the DJ's decision that are relied upon, I have decided to admit this evidence.

36. The Respondent does not dispute the fact that M suffers from hip pain. However, her medical records describe her hip problem as a longstanding issue (see 9 September 2019 record entry). Yet, it was not a problem that concerned her sufficiently to lead her to suggest to the local authority, to Dr Borghino, or to the DJ that it would prevent her from caring for her grandchildren if the Applicant was to be extradited.

37. In summary the medical records show that M was prescribed painkillers on 10 September and 16 October 2019 for ongoing hip pain which had grown worse in the few weeks prior to 10 September, and which had been disturbing her sleep for months but increasingly so in the last two weeks. On 10 September 2019 a referral was made to a physiotherapist.

38. The increased hip pain is not said to be permanent and the prognosis is improvement with "physiotherapy to try to improve symptoms". The medical evidence does not refer to the need for hip replacement surgery.

39. The DJ gave careful consideration to M's health problems when she conducted the balancing exercise (see para 11 above). Whilst the hip pain is a further difficulty for M, I am not persuaded that if it had been known to the DJ it would have had any material effect on her decision; in my judgment, it is not "decisive" of the appeal.

40. There is nothing in the new evidence before me at the hearing or the further new evidence to suggest that if the choice was between M looking after her grandchildren

or them going into foster care she would do anything other than what she had said repeatedly she would do, namely take care of them.

41. In fact, the choice is not now between M taking care of the children and foster care. The Respondent has been informed of the Applicant's pregnancy and by letter dated 11 September 2019 the Chief Prosecutor, Mr T Krusna, responded to the CPS as follows:

> "I hereby inform you that given the current situation (i.e. pregnancy of [the Applicant]), if she is surrendered to Lithuania, a milder measure of constraint will be imposed upon her e.g. home arrest, intensive monitoring or other, in such a way ensuring she will be with her child."

That being so there is, Ms Hinton submits, no reason why her other three children should not join her and live with her in Lithuania, if she decides that they should. They are Lithuanian citizens, and speak Lithuanian (see para 7 above).

42. If the Applicant is convicted it will be for a Lithuanian judge to decide upon sentence. The judge will, no doubt, when considering what sentence is appropriate, have regard to the fact that she is the mother of three children and a baby. Section 3 of the Code of Penalty Execution of the Republic of Lithuania provides for a mother with a child under three, who is serving a sentence of imprisonment, to live together with her child (see *Palioniene v Lithuania* [2019] EWHC 944 (Admin) at para 35).

43. Ms Townshend submits that it is not realistic to suggest that the three children can go and live with the Applicant in Lithuania. No doubt it will be disruptive for them to move to Lithuania, and there can be no certainty that they will be able to live with their mother if she is convicted. However difficult it may be for them, the fact is that there is that option if they do not go and live with their grandmother (**Ground 6**). (The Respondent acknowledges that because of the uncertainty this would be a difficult decision for her to make, but nevertheless she now has this additional option). In those circumstances there is no realistic prospect of them having to go into local authority care. That being so I do not consider there is any good reason to request Newham Social Services to provide an updated s.7 report.

44. The only other matter that is said to require consideration in terms of a change of circumstance since the DJ's decision is B's condition (**Ground 4**). The Applicant in her evidence referred to B as having a recent history of self-harming (Decision, para 32(f)). B stated that as a result of her mother's incarceration she became depressed and cut herself. She also stated she began to have suicidal thoughts (Decision, para 40). Dr Borghino concluded that extradition would increase the risk of B (and C) developing more significant emotional difficulties, such as childhood depression (Decision, para 59(e)). B's medical notes confirmed a visit to her GP surgery on 23 November 2018 and recorded her history which includes "she reports today that since she was 8 years old she has been cutting wrists and upper thighs". Scars were present on examination. The note further records "she is attending counselling arranged by her school and she feels the counsellor is just a person to talk to but nothing has changed. She does not have harming ideation". Following her visit, she was referred to a child and adolescent psychiatric service (Decision, para 64(b)). The DJ in her conclusions (para 94) noted that B has received no treatment for her psychological

issues "until now", and that "Importantly, for the first time, B has now been referred to Child and Adolescent Psychiatric Services for treatment which may have a positive impact on her psychological issues".

45. In the balance against extradition the DJ (at para 101) took into account that B "has shown signs of ongoing psychological stress which has included self-harm". In the balance in favour of extradition (at para 100) the DJ took into account that "Medical assistance, including psychiatric and psychological intervention is likely to be available to both M and B, should they need it".

46. Ms Townshend submits that the DJ took insufficient account of the effect of the Applicant's extradition on her three children, and in particular the effect on B which would be particularly severe and is already apparent given the recent and numerous incidents of self-harm.

47. In her second report of 3 March 2019, following the interviews she conducted in February 2019, Dr Borghino wrote (at para 11.15):

> "In regards to B's current psychological state, it has been reported by B and her mother that B has begun more severely self-harming. … She is also experiencing suicidal ideation and reported her coping strategies… are no longer effective. Given her plan to commit suicide was realistic and concrete and the accessibility of train stations throughout London, it is my opinion that B would benefit from being referred to a child psychologist for an additional assessment of her psychological difficulties and to assess risk of harm. This is particularly relevant given the current deterioration in her emotional well-being and the ongoing nature of [the Applicant]'s legal proceedings could prolong her symptoms of anxiety, depression and stress. This prolonged experience would make it more likely for her to continue to deteriorate without additional support services available to evaluate and monitor her emotional state and personal safety. It is my opinion that, in the event that [the Applicant] is extradited, B would be at high risk of self-harming or attempting suicide. I recommend that additional support and safety plans be implemented prior to Ms AB's extradition taking place in order to ensure B's physical and emotional well-being."

48. Giving her opinion of the overall effect of the Applicant's extradition on her children, Dr Borghino said in her first report that "it is my opinion that [the Applicant]'s extradition is likely to be psychologically detrimental to all of the children". In her second report Dr Borghino said that in her opinion "all three children are at high risk of experiencing Ms AB's extradition as a traumatic loss" (para 11.15). Dr Borghino stated that her earlier conclusion that the extradition "could exacerbate the degree to which the children would experience difficulties in psychological functioning remains the same" (para 11.16).

49. I do not accept the criticisms of the DJ in relation to her consideration of the welfare of the children, in particular of B's psychological condition. It is, in my view, clear

that the DJ considered the evidence of the Applicant and her family and in particular that of Dr Borghino in relation to the welfare of the children with considerable care. The DJ, in relation to B, in addition, had the benefit of the report of Ms Maroof of 27 November 2018. Ms Maroof described B as a quiet but confident young person who is able to express herself openly and honestly (Decision, para 52). It appears that part of B's distress was as a result of her unhappy relationship with a former boyfriend, James, and also as a result of other incidents referred to by Ms Maroof in her report (as to which, see Decision, para 51).

50. Ms Townshend submits that even if the Judge was not wrong to reach the decision she did on the evidence then before her, if she had been considering the facts as they now are she would have been required to have ordered the Applicant's discharge. In support of this submission Ms Townshend relies on the decision in the case of *M v Circuit Judge in Czestochowa, Poland* [2019] EWHC 1342 (Admin). In that case, as in the present case, the appellant did not come to the UK to escape extradition, but the offending was more serious (involvement in alleged avoidance of the equivalent of £11 million in tax) than that alleged against the Applicant. Nevertheless, the change since the hearing before the District Judge, primarily in relation to the willingness or capacity of the grandparents to care for the children led Holman J to quash the order for the appellant's extradition (see paras 29-30 and 43-49). However, each case turns on its own facts. In *M* the judge found that there had been "a very significant change" in the material evidence (para 30). I do not accept that M's new evidence affects her capacity or willingness to look after her grandchildren, or that the new evidence concerning B's self-harming, when considered with all the other evidence on those matters as a whole, would have required the DJ to have reached a different decision.

51. Dr Borghino interviewed the Applicant and her children and M in February 2019 within days of the decision ordering the Applicant's extradition. The extradition proceeding must have been and continued to be very stressful for the family. That must have been particularly so in the time immediately following being informed of the decision. The Applicant, in her addendum proof of evidence dated 7 March 2019 updates the Court on B's situation since the extradition hearing, in particular in relation to the period between 8 and 12 February 2019. On 11 February there was an incident of self-harm following a visit by the Applicant and B to a psychologist to whom they were referred by their GP when B was upset with the psychologist's comment about the possibility of her "going into foster care". The Applicant informed the GP of this during a visit on 6 March 2019 and the GP noted "Child and adolescent psychiatry URGENT" (see Exhibit JS4).

52. Further, it is not correct that the DJ failed to consider the effect of extradition on the Applicant's mental health, particularly the effect of being separated from her three children (Ground 3). The DJ noted that Dr Borghino formed the impression that the Applicant has a good relationship with her children, who are well bonded with her (Decision, para 56). Dr Borghino's report further noted, as did the DJ, that the Applicant described herself as worried and anxious. She stated, "I don't want to live without my kids, I would not be able to cope" (Decision, para 56(c)). The self-report assessments indicate that the Applicant has recently experienced symptoms of depression and stress (Decision, para 56(d)). In the balance against extradition the DJ took account of the fact that extradition and consequent separation is likely to be psychologically detrimental to the Applicant, her mother and her children (Decision,

para 101). Plainly, in my view, the DJ had proper regard to the effect of extradition on the Applicant's mental health.

53. As for the unknown length of time that the Applicant will be absent from her children, Ms Townshend submits that the Judge was wrong to take this into account as a factor in favour of extradition (**Ground 2**). The clear implication of the DJ's findings is, Ms Townshend submits, that she may not in fact be away very long (see para 89). However, having found that if convicted in this jurisdiction, she would "likely receive a lengthy prison sentence" (para 96), a consistent finding on the evidence ought to have been that the time the Applicant will be away from her family is likely to be for a considerable period. The length of separation is, in my view, a relevant factor to which a court may have regard. However, the DJ, having observed that she could not assess the length of separation and that the decisions to be taken in relation to bail and, if she is convicted, sentence are to be taken by the requesting state, I agree with Ms Hinton that the length of separation was not a factor that could have significantly influenced the DJ's decision.

54. Finally, as for the Applicant's contention that the DJ took into account two irrelevant factors when listing factors in favour of extradition (Ground 1), I do not accept the criticisms made. First, the absence of delay. In *HH* Lady Hale stated (at para 8(6)) "The delays since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact on private and family life". The DJ properly noted (at para 100) that "The allegations are recent. There has been no delay in this request for [the Applicant's] removal". Second, the fact that the Applicant's current circumstances are very similar to those which existed when these offences are said to have been committed, again was properly noted by the DJ. This was not a case where the personal circumstances of the person requested had materially changed so as to weight the balance against extradition.

Conclusion

55. In my judgment the DJ conducted the balancing exercise as required, having proper regard to the factors favouring extradition and those militating against it. The DJ's decision, on the evidence before her, was not, in my view, even arguably wrong.

56. Having regard to the new evidence, specifically the second addendum witness statement of M dated 29 July 2019 I will grant permission to appeal. However, for the reasons I have given I am satisfied that the DJ would have reached the same conclusion if the new evidence had been before her, and would not have been wrong to have done so. M has failed to explain satisfactorily why she will not now care for her grandchildren when previously she stated unequivocally that she would. I do not consider that any of the other new evidence relating to B (or the Applicant's other two children) would have led to a different outcome before the DJ if that evidence had been before her.

57. The only new evidence that may be material, not in terms of the order for the Applicant's extradition but in relation to the subsequent care of her children, is her pregnancy. On return to Lithuania she will be on bail. There is therefore now the option (at least until trial and thereafter subject to the outcome and sentence in the event of conviction) for her three children to live with her in Lithuania (see paras 41-42 above).

58. Accordingly, for the reasons I have given, this appeal is dismissed.