Neutral Citation Number: [2019] EWHC 944 (Admin)

Case No: CO/3903/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/04/2019

Before:

MR JUSTICE DINGEMANS

- -

Between:

Jalena Palioniene	**Appellant**
- and -	
Prosecutor General's Office, Lithuania	**Respondent**

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- -

Malcolm Hawkes (instructed by **Goodall Barnett James Solicitors**) for the **Appellant**
Hannah Hinton (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 28 March 2019

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Approved Judgment

Mr Justice Dingemans:

Introduction

1. This is the hearing of an appeal against the decision of District Judge (Magistrates' Court) Rebecca Crane ("the judge") dated 1 October 2018 to order the extradition of the Appellant Jalena Palioniene ("Ms Palioniene") to Lithuania in relation to the possession and supply of heroin. The extradition is sought by Deputy Prosecutor General's Office, Lithuania as issuing judicial authority ("the Prosecutor General's Office") pursuant to a European Arrest Warrant ("EAW") issued on 8 June 2015 and certified by the National Crime Agency on 24 June 2015.

2. Ms Palioniene contends that her appeal should be allowed and her discharge ordered because first there is a real risk of impermissible treatment by reason of the prison conditions in Lithuania contrary to article 3 of the European Convention on Human Rights ("ECHR"). Secondly Ms Palioniene contends that extradition would infringe her rights protected by article 8 of the ECHR. Ms Palioniene relies on the facts that: she is the sole carer for her son who was born in June 2017; the offending was not serious; and the judge had failed to make proper findings about why Ms Palioniene had left Lithuania so that the finding that she was a fugitive cannot stand.

3. The Prosecutor General's Office contends first that there is no real risk of impermissible treatment because an acceptable assurance has been given in respect of remand prison conditions and there is no evidence that the prison conditions for female prisoners after conviction pose any relevant risk of impermissible treatment. The Prosecutor General's Office contends secondly that extradition is a permissible interference with Ms Palioniene's article 8 ECHR rights. One of the offences involved a supply of heroin to prison and Ms Palioniene deliberately left Lithuania in breach of her bail conditions and was a fugitive. Proper arrangements for the care of Ms Palioniene's son will be made by social services.

Issues on appeal

4. The issues were further refined in submissions at the hearing by Mr Hawkes on behalf of Ms Palioniene and Ms Hinton on behalf of the Prosecutor General's Office and I am grateful to them for their assistance. I must therefore consider whether: (1) whether there is a real risk of impermissible treatment of Ms Palioniene in the prison conditions in which she will be held contrary to article 3 of the ECHR; (2) whether further evidence in relation to the seriousness of the offences ought to be admitted as fresh evidence and whether the offending was serious; (3) whether an addendum proof of evidence ought to be admitted as fresh evidence and whether the finding that Ms Palioniene was a fugitive was properly made; (4) whether extradition would involve an impermissible interference with Ms Palioniene's article 8 rights; and (5) whether an assurance or further information should be obtained from Lithuania in relation to the arrangements for Ms Palioniene and her son pending any trial.

Relevant factual background

5. I have taken the relevant background from the facts found by the judge as set out in the judgment and the terms of the EAW.

6. The EAW related to 4 offences. One of the offences was for the alleged possession of methadone which it was common ground did not amount to an extradition offence (because the maximum sentence was 45 days imprisonment) and Ms Palioniene was discharged in respect of that offence.

7. The other offences related to heroin. The first offence alleged that on a date no later than 18 June 2012 Ms Palioniene put 0.025g of heroin under a postage stamp on an envelope which was sent to a prisoner in Marijampole prison. The second and third offences related to 5 November 2012. Ms Palioniene was alleged to have purchased a white powder from a named person which was "not less than 1.2106g of powder containing 0.230g of heroin" of which she consumed part and sold part to others and "the remaining quantity – not less than 1.2106 g containing 0.230g of heroin was given" to Tatjana Rungo.

8. The EAW referred, among other offences, to article 260 which was headed "Unlawful possession of narcotic or psychotropic substances for the purpose of distribution thereof or unlawful possession of a large quantity of narcotic or psychotropic substances".

9. Ms Palioniene was in detention from 6 to 8 November 2012 and she was served with the notification of suspicion on 7 November 2012 and 23 October 2013. Ms Palioniene was interviewed on 7 and 8 November 2012 and 25 October 2013 by the pre-trial officer or judge.

10. The EAW stated that Ms Palioniene then hid from pre-trial investigations and a search was announced. It appears that Ms Palioniene left Lithuania in about October 2013 and came to the United Kingdom. The date of departure must have been after the further interview on 25 October 2013. The judge found that Ms Palioniene was a fugitive.

11. Ms Palioniene worked after her arrival in the UK. She became pregnant with her son and was on maternity leave. She is now on universal credit. She is a single parent who is not in a relationship. Her son's father, Mr Beker, is in Lithuania.

12. Ms Palioniene has previous convictions in Lithuania for theft and possession and supply of drugs on dates between June 2005 and July 2007. Ms Palioniene has convictions in the UK for 9 offences of shoplifting and an offence of going equipped for theft between October 2014 and April 2016 (albeit the last of these convictions was in September 2016). Ms Palioniene was convicted in December 2017 of failing to comply with a community order which was then revoked.

13. Ms Palioniene gave evidence at the extradition hearing denying any involvement with the EAW offences. Ms Palioniene also gave evidence that she had made admissions to the offences in Lithuania only because she had been beaten when she was being interviewed and because threats had been made that her sister would become involved in criminal proceedings. When asked if that had had any influence on her decision to leave the country Ms Palioniene replied "immediately, I left immediately but it also had an impact on my decision, there was [no] jobs in Lithuania". Mr Hawkes noted that there had been no cross examination before the judge of Ms Palioniene about her evidence that she had been beaten. He accepted that Ms Palioniene's evidence about the beating was not in her proof of evidence provided as evidence to the extradition

hearing. Mr Hawkes had not submitted to the judge that the effect of Ms Palioniene's oral evidence about the beating meant that the finding that Ms Palioniene was a fugitive was unsound.

14. There is a welfare report to the Court from West Sussex County Council produced pursuant to section 7 of the Children Act 1989. This shows that social services had become involved because of earlier concerns in relation to Ms Palioniene's accommodation and Mr Beker's arrest on drugs charges. Mr Beker was in custody for part of the period and removed to Poland. Ms Palioniene had appeared to care well for her son. She had never appeared to be under the influence of drugs when seeing social services. There were some matters which social services wanted to question Ms Palioniene about, relating to a man who stayed for a while and disappeared, the relationship with the partner of a friend, and why Ms Palioniene had refused assistance with housing, but it was noted that there may be innocuous answers to those questions.

15. Social Services considered that the accommodation for Ms Palioniene and her son was far from ideal. However her son had consistently presented as well cared for and having a warm and trusting relationship with his mother. Her son was gaining a strong sense of identity and was achieving many of his milestones. It was felt that removing her son would cause him significant harm, and the level of distress would inevitably affect his development in many ways. The local authority was obtaining legal advice about its responsibilities to care for Ms Palioniene's son but if Lithuania had responsibility the relevant local authority would take the son into care until negotiations with Lithuania had concluded. If the local authority had responsibility her son would be placed in long term foster care. The report noted the difficulties with either Mr Beker or Ms Palioniene exercising parental responsibility for their son from Lithuania. It was noted that negotiations about the son's care were likely to be difficult and protracted which was likely to affect the son. The report noted "either way he will become a looked after child (LAC) and be cared for and protected by the LAC protocols of the county".

Some evidence on the prison conditions and assurances about prisons

16. Lithuania provided an assurance in the course of the proceedings before the judge. This provided that all persons surrendered under an accusation warrant would be held in Kaunas Remand Prison, Lukiskes Remand Prison or Siauliai Remand prison. They would have not less than 3 square metres of space. Further provision was made about using refurbished parts of the prisons. Further information showed that female remand prisoners were being held separately from male prisoners in Lukiskes Remand Prison and Siauliai Remand prison.

17. Further information provided on 1 August 2018 showed that section 3 of the Code of Penalty Execution regulated the peculiarities of penalty execution of pregnant women and mothers who have children under the age of 3 years (and Ms Palioniene's son is nearly 2 years). Provision is made for such women to be accommodated together with their children in the "children orphanage facility of the imprisonment institution". Alternatively if mothers wish the child may be kept in the children orphanage section and the mothers may visit for 2 hours each day. Some mothers and children were permitted by the prison management to serve a sentence in special homes until the child turned 3 years, and on occasions until the child turned 4 years.

18. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") Report to the Lithuanian Government on the visit from 5 to 15 September 2016 dated 1 February 2018 noted at paragraph 56 that in Lithuania sentenced women prisoners may be allowed to keep their infants in prison until the child reaches the age of 3. Such prisoners were accommodated in the mother and child unit, a separate building at Panevezys prison. It was noted that there were two playrooms, a living room and 5 individual rooms only one of which was occupied at the time of the visit by a mother and her two year old child. The rooms "were spacious, pleasantly decorated, reasonably well kept and suitable furnished". There were other facilities.

19. The same report noted that conditions at Panevezys prison were overall satisfactory despite the advanced age of the buildings. Some dormitories did not offer 4 m2 of living space. There was some inter-prisoner violence which related to extortion of money, food and clothes by some powerful inmates. There were numerous vacancies for prison officers. Restraint beds which the CPT noted should not be used in a non-medical setting had been supplied to the prisons. There were plans to close Panevezys and build a new prison.

The proposed fresh evidence

20. Mr Hawkes sought to introduce a document from the United States National Library of Medicine, National Institutes of Health. This reported a study from Switzerland about the dosage regimes in the prescription of heroin to chronic opioid addicts in Switzerland. It showed that 474 mg was the daily prescription for intravenous users of heroin and 993 mg was the daily prescription for smokers of heroin. The document appears to have been produced in 2004.

21. Mr Hawkes also sought to introduce a new proof of evidence which purported to be from Ms Palioniene headed "addendum proof of evidence". The addendum gave further details of the beating alleged to have been suffered by Ms Palioniene suggesting that it occurred about an hour and a half after her first arrest. She said that "as soon as I was released by the police, I immediately made preparations to leave the country". The allegations about the beating were not in Ms Palioniene's first proof of evidence which was relied on before the judge. The addendum proof of evidence was not signed in the copy before me and it did not appear that Mr Hawkes had a signed copy, although he confirmed that Ms Palioniene had given these instructions.

Relevant provisions and legal principles relating to fresh evidence in extradition cases

22. Section 27 of the Extradition Act 2003 ("the 2003 Act") which deals with the court's powers on appeal refers at subsection (4)(a) to evidence being available that was not available at the extradition hearing, which at (4)(b) would have resulted in the judge deciding the relevant question differently.

23. In *Hungary v Fenyvesi* [2009] EWHC 321 (Admin); [2009] 4 All ER 324 at paragraph 32 the Court defined evidence that was 'not available at the extradition hearing' for the purposes of the Act as: …evidence which either did not exist at the time of the extradition hearing, or which was not at the disposal of the party wishing to adduce it and which he could not with reasonable diligence have obtained. If it was

at the party's disposal or could have been so obtained, it was available. It may on occasions be material to consider whether or when the party knew the case he had to meet. But a party taken by surprise is able to ask for an adjournment. In addition, the court needs to decide that, if the evidence had been adduced, the result would have been different resulting in the person's discharge. This is a strict test, consonant with the parliamentary intent and that of the Framework Decision, that extradition cases should be dealt with speedily and should not generally be held up by an attempt to introduce equivocal fresh evidence which was available to a diligent party at the extradition hearing. A party seeking to persuade the court that proposed evidence was not available should normally serve a witness statement explaining why it was not available".

24. An appellant who intends to rely on fresh evidence must comply with the requirements of rule 50.20(6) of the Criminal Procedure Rules which provides: "(b) if the grounds of appeal are that there is an issue which was not raised at the extradition hearing, or that evidence is available which was not available at the extradition hearing, the appeal notice must— (i) identify that issue or evidence, (ii) explain why it was not then raised or available, (iii) explain why that issue or evidence would have resulted in the magistrates' court deciding a question differently at the extradition hearing, and (iv) explain why, if the court had decided that question differently, the court would have been required not to make the order it made".

Relevant principles relating to article 8 of the ECHR

25. There was no material dispute about the applicable legal principles. Section 21A of the 2003 Act requires the Court to determine whether the extradition of the Appellant would be proportionate and compatible with rights under the ECHR. Article 8 of the ECHR provides a right to a private and family life, which is qualified. The relevant principles governing the approach to this issue have been established, see *Norris v USA* [2010] UKSC 9, [2010] 2 AC 487; *H(H) v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25, [2013] 1 AC 338; and *Poland v Celinksi* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551. Delay is a relevant factor for any article 8 assessment, see *Konecny v Czech Republic* [2019] UKSC 8; [2019] 1 WLR 1586.

26. In *H(H)* the Supreme Court reviewed the approach set out in *Norris v USA* in the light of the decision in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 AC 166, and in the light of the way the guidance in *Norris v USA* had been applied in practice, see *H(H)* at paragraphs 2 and 22. It was acknowledged in *H(H)* at paragraph 1 that the impact on younger children of the removal of their primary carers and attachment figures would be devastating. It was noted that the interests of the children were a primary consideration, as set out in article 3.1 of the United Nations Convention on the Rights of the Child but "a primary consideration" is not the same as "the primary consideration" let alone "the paramount consideration" (emphasis added), see *H(H)* at paragraph 11. The importance of paying careful attention to what will happen to the child if the sole or primary care giver is extradited was emphasised, as was the need for a court to consider whether the public interest in extradition could be met without doing serious harm to a child, see *H(H)* at paragraph 33.

27. The question before the judge was whether interference with the article 8 right is outweighed by the public interest in extradition. There is no test of exceptionality. In

the balance there is a constant and weighty public interest in extradition, people should have their trials, the UK should honour treaty obligations, and the UK should not become a safe haven for fugitives. The best interests of the children are a primary consideration, and Courts need to obtain the information necessary to make the necessary determinations relating to children. Delay since commission of the crime may diminish weight to be attached to the public interest and increase the impact on private life and likely future delay is a relevant feature to be taken into account. The question before me on appeal is whether the judge went wrong in her assessment of the article 8 balance.

Relevant principles relating to article 3 of the ECHR

28. Membership of the Council of Europe is a highly relevant factor in deciding whether an extradited person would, in fact, be likely to suffer treatment contrary to article 3 if extradited there because of mutual trust, see *Targosinki v Poland* [2011] EHWC 312 (Admin) at paragraph 5. The presumption may be rebutted by clear, cogent and compelling evidence, something approaching an international consensus, see *Krolik v Poland* [2012] EWHC 2357 at paragraph 3. If there has been a pilot judgment of the European Court of Human Rights ("ECtHR") against the requesting state identifying structural or systemic problems the presumption will be rebutted. Such judgments have been issued against states including Italy and the Russian Federation.

29. Prison conditions are unlikely to be static and to make a conclusion about the real risk test the Court has to examine the present and prospective position as best as it can on the materials available, see *Elashmawy v Italy* [2015] EWHC 28 (Admin) at paragraph 90. The view of any Court, including the ECtHR on prison conditions in a country is only definitive at the time that the view is expressed. Once the presumption of compliance has been rebutted by clear, cogent and compelling evidence approaching an international consensus, then clear and cogent evidence adduced on the part of the requesting state may demonstrate that the previous view about the prison conditions generally or a particular prison can no longer be maintained, see *Elashmawy* at paragraphs 90 and 91.

30. There is a consensus that pre-trial conditions in Lithuania involve, apart from in Kaunas remand prison, a real risk of treatment infringing article 3 of the ECHR, see *Jane v Lithuania* [2018] EWHC 1122 (Admin).

31. However even where there is evidence that there is a real risk of impermissible treatment contrary to article 3 of the ECHR, the requesting state may show that the requested person will not be exposed to such a risk by providing an assurance that the individual will be held in particular conditions which are compliant with the rights guaranteed by article 3 of the ECHR. Such assurances form an important part of extradition law, see *Shankaran v India* [2014] EWHC 957 (Admin) at paragraph 59. The principles relating to the assessment of assurances were summarised by the European Court of Human Rights and those principles have been applied to assurances in extradition cases in this jurisdiction, see *Badre v Court of Florence, Italy* [2014] EWHC 614.

Relevant principles relating to assurances

32. The Court may consider undertakings or assurances at various stages of the proceedings, including on appeal, see *Florea v Romania* and *USA v Giese* [2015] EWHC 2733 (Admin), and the Court may consider a later assurance even if an earlier undertaking was held to be defective, see *Dzgoev v Russia* [2017] EWHC 735 at paragraph 68 and 87.

33. It is established that an assurance is not evidence. This is because it is a diplomatic assurance provided by the requesting state, and does not deal with evidence about actual conditions. In *United States of America v Giese* [2015] EWHC 3658 (Admin); [2016] 4 WLR 10 there was consideration of the powers of the Divisional Court to allow an appeal on the basis of a new assurance. It was held at paragraph 14 that an assurance was an "issue" and not "evidence" for the purpose of section 106(5)(a) of the Extradition Act 2003, meaning that an assurance may be provided for the first time on appeal.

34. For Lithuania which is a category 1 state for the purposes of the Extradition Act, the Framework Decision provides at article 15(2) that if the executing judicial authority finds the information communicated by the issuing Member state to be insufficient to allow it to decide on surrender, it should request supplementary information be furnished as a matter of urgency and may fix a time limit for receipt thereof. The CJEU in *Criminal proceedings against Aranyosi and Caldarau* (Case Nos C-404/15 and C-659/15PPU); [2016] QB 921 ("*Aranyosi*") held, at paragraph 104, that where there was a real risk of impermissible treatment "the executing judicial authority must request that supplementary information be provided by the issuing judicial authority … which must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end". This approach has been applied in *Georgiev and others v Bulgaria* [2018] EWHC 359 (Admin) at paragraph 8(ix) and (x).

No real risk of impermissible treatment contrary to article 3 of the ECHR – issue 1

35. The assurance provided in this case has been held to be sufficient to avoid any real risk of impermissible treatment of remand prisoners contrary to article 3 of the ECHR, see *Jane v Lithuania* [2018] EWHC 2691 (Admin). There is nothing to suggest that I should take a different approach.

36. Mr Hawkes was unable to point to any evidence showing that prison condition for convicted female prisoners in Lithuania created a real risk of impermissible treatment contrary to article 3 of the ECHR. I reject the submission that simply because there was such a real risk for remand prisoners in Lukiskes and Siauliai it could be inferred that there was such a risk for all convicted female prisoners. That was not the basis of the judgment in *Jane v Lithuania.* If that proposition was correct the Kaunas assurance could not have been accepted, and the problems would have been highlighted in the relevant CPT reports. There have been no such reports. The only material before us shows that the mother and baby unit at Panevezys prison was spacious and reasonably well kept and suitably furnished. Overall conditions in the

prison were satisfactory. Although some prisoners did not have the CPT recommended 4 m2 of living space, there was nothing to suggest that the required 3 m2 of living space was not available. There had been some reports of intra prisoner violence relating to extortion, but nothing to suggest that Ms Palioniene would not be properly protected. The proposed construction of a new prison does not prove that there will be a real risk of impermissible treatment in the old prison. In my judgment the judge was right to dismiss this objection to extradition

The offences were serious and the fresh evidence does not affect this conclusion - issue 2

37. Mr Hawkes submitted that the amount of heroin sent to the prison under the stamp was incapable of causing harm, showing that this was not a serious offence. I reject that submission. The supply of illegal drugs to prison is always a serious offence. The use of illegal drugs in prisons creates very real risks of harm to prisoners and to prison officers.

38. The EAW also suggests that Ms Palioniene was street dealing in heroin. This is a serious offence because the use of heroin creates addiction, and the need to obtain heroin to feed the addiction leads to further acquisitive crime, together with the well documented health issues. I reject the submission that the wording of the EAW suggested that no drugs could have been consumed because the weights had been the same. The warrant simply identified the minimum amount that must have been in Ms Palioniene's possession at any one time, which was the amount recovered by the police.

39. These conclusions are not affected by the Swiss report about dosage of heroin to intravenous and smoking users of heroin. This is because heroin can always be added to other heroin to be used in prison. Street dealing will always involve small amounts, which is one of the reasons that the amount of drug does not affect the category for street dealers in the Sentencing Guidelines in England and Wales. In circumstances where the further information in the Swiss report does not assist in the determination of this appeal I refuse permission for it to be adduced as fresh evidence.

40. In my judgment the judge was right to find, in paragraph 26(c) of the judgment "whilst the quantity of drugs is small, the seriousness of the offences is the supply of drugs and, particularly, the attempt to supply drugs into a prison".

The finding that Ms Palioniene was a fugitive was properly made – issue 3

41. The evidence shows that Ms Palioniene was well aware of the ongoing investigation into her alleged offences and decided to leave Lithuania. The finding that she was a fugitive was all but inevitable.

42. However Mr Hawkes noted that Ms Palioniene had given evidence that she had been beaten by the police, and that this was one of the reasons that she had left Lithuania and submitted that as Ms Palioniene had not been cross examined on this point then Ms Palioniene's evidence had to be accepted, for the reasons given in Phipson on Evidence, Nineteenth Edition, at 12-12. Mr Hawkes also relied on the fact that reports of beatings had been made by a minority of prisoners to the CPT as evidenced in their reports of 2012 and 2018, which made Ms Palioniene's evidence more

credible. This meant that the finding that Ms Palioniene was a fugitive could not stand. Ms Hinton noted that this allegation was first made at the extradition hearing, she had no time to take instructions on it, and the allegations of beating had not been relied on at the time of the extradition hearing to show that the finding of the fugitive should not have be made, so it was not then necessary to obtain evidence about it.

43. In my judgment the finding that Ms Palioniene was a fugitive was properly made by the judge. Ms Palioniene accepted that she knew about the criminal proceedings but had decided to leave Lithuania despite that knowledge. Further it is not the general function of the judge at an extradition hearing relating to category 1 territories to determine disputed issues of fact, as this would be inconsistent with the aims and purposes of the Framework decision to which the 2003 Act in part gives effect. If Ms Palioniene had wanted to suggest that the finding that she was a fugitive should not have been made because she was beaten and had to leave Lithuania the point should have been raised either at the first hearing when the issues were identified or in correspondence before the extradition hearing. The evidence in support of the allegation should have been particularised at the hearing and submissions should have been made to the judge at the extradition hearing to that effect. There will inevitably be parts of the evidence given by a requested person, for example that they are innocent of the crime, which are not the subject of cross examination at the extradition hearing because they are not relevant to the issue to be determined by the judge. Ms Palioniene had not identified this submission before the hearing, and cannot now rely on the absence of cross examination on this point to show that her evidence was accepted. It might also be noted that Ms Palioniene's evidence did not suggest that it was the only reason for her leaving Lithuania, this was because she highlighted employment prospects.

44. I do not admit Ms Palioniene's addendum proof of evidence as fresh evidence. First it is not signed. Although I accept Mr Hawkes had been supplied with it as representing Ms Palioniene's instructions, the fact of signing a witness statement is a formality which emphasises to everyone, including the witness, that this is formal evidence. Secondly there is no explanation which conforms with rule 50.20(6) of the Criminal Procedure Rules showing why this evidence was not adduced at first instance. It seems likely that this was because Ms Palioniene's evidence about her beating took everyone by surprise at the extradition hearing, but there is nothing to suggest that the rules should not be enforced in this case. Thirdly it is difficult to relate this fresh evidence to the evidence in the case. Ms Palioniene suggests that her beating happened shortly after her arrest, and she had said that she had left Lithuania immediately afterwards. However the further information shows that there were further interviews continuing over the next year. Finally the evidence would not have made any difference to the appeal for the reasons given in paragraph 43 above.

The Court needed to obtain more information about whether the public interest in Ms Palioniene extradition could be met without doing harm to her son – issues 4 and 5

45. The judge had properly identified the factors favouring extradition, including the serious nature of the offences and the fact that Ms Palioniene was a fugitive. The judge also identified the factors against extradition related to the fact that Ms Palioniene was the sole carer for her son, and that there would be a significant emotional impact on her son if she were to be extradited. The judge also accurately

recorded "if [Ms Palioniene] is convicted there is a possibility of her being accommodated in prison with [her son]. However, there is no indication that such facilities exist for pre-trial detention. There is no indication how long [Ms Palioniene] would be held in pre-trial detention". This was an accurate summary of the evidence before the judge, because it appeared that Ms Palioniene would be held pending trial in Kaunas, Lukiskes or Siauliai, and the mother and child unit was only available after conviction in Panevezys.

46. It was in these circumstances that the judge concluded that "the negative impact of extradition on [Ms Palioniene] and [her son] are not of such a level that the court ought not to uphold the country's extradition obligations in light of the nature of the charges, that [Ms Palioniene] is a fugitive and her record of previous convictions". It is plain from the analysis of cases undertaken in *H(H)* that the rights of children, even in sole carer cases, will rarely outweigh the importance of complying with extradition requests, see *H(H)* at paragraph 24. Although the effect on a child's interests is always likely to be more severe than upon an adult's interest, it is also right that "the court may have to consider whether there is any way in which the public interest in extradition can be met without doing such harm to the child", see *H(H)* at paragraph 33.

47. In my judgment the judge's analysis was correct so far as it went. However the evidence in the social services report showed that the best interests of Ms Palioniene's son were served by remaining with her, even in a mother and child unit at a prison, particularly given the limited accommodation available to Ms Palioniene in the UK. Therefore, in order to discharge the obligations of the Court to determine whether the public interest in extradition could be met without causing serious harm to Ms Palioniene's son, the judge should have sought to obtain an assurance to show either that Ms Palioniene could be accommodated with her son if she was remanded in custody pre-trial or if that was not possible that pre-trial detention would not exceed 6 months so that the effect on the son would be minimised. In my judgment it is appropriate to seek this assurance even at this stage of the proceedings. This is because Lithuania, when making the extradition request, could not have known that Ms Palioniene would have had a son, become the sole carer for her son, and shown herself to be a suitable parent, and Lithuania might not have known that a Court, in order to comply with guidance gives in *H(H)*, would require this assurance. Obtaining such an assurance is consistent with the principles set out in paragraph 33 above. It is also important to ensure that the court engaging in this article 8 ECHR balancing exercise has the best possible information about what is likely to happen to Ms Palioniene and her son before trial. It is also important to uphold the system of extradition set out in the Framework Decision.

48. Once the position in relation to the assurance is clear, the court can make the most informed decision about whether or not the weighty public interest in extraditing Ms Palioniene can be reconciled with the best interests of the son remaining with Ms Palioniene, or if not, whether the public interest in extradition outweigh the article 8 ECHR rights engaged in this case.

49. In these circumstances I consider that it is appropriate to give Lithuania an opportunity, if it considers it appropriate, to provide an assurance: (1) that Ms Palioniene will not be held in detention before any trial; or (2) that Ms Palioniene can be held in detention pre-trial with her son; or (3) that Ms Palioniene will not be held

in pre-trial detention without her son for a period longer than 6 months. It will be for Lithuania to decide whether to give any assurance. I will allow a period of 42 days from the signing of the order consequential on this judgment for any assurance to be provided.

50. In the interim the appeal will be stayed. At the expiry of the 42 day period the parties will have the opportunity to make short further written submissions in relation to: (1) any assurance which has been provided; and (2) whether a further oral hearing is required.

Conclusion

51. For the detailed reasons given above in my judgment: (1) there is no real risk of impermissible treatment contrary to article 3 of the ECHR of Ms Palioniene in the prison in which she will be held post-conviction and there is an adequate assurance to cover her remand detention; (2) the judge was right to find that the offending was serious and the Swiss report ought not to be admitted; (3) the finding that Ms Palioniene was a fugitive was properly made and the addendum proof of evidence ought not to be admitted; (4) the Court needed to obtain an assurance to determine whether it was possible to meet the public interest in Ms Palioniene's extradition without causing the serious harm to her son which would follow on any separation from his mother; (5) Lithuania should be given a period of 42 days to provide such assurances as they think fit; and (6) after expiry of that period the parties will have an opportunity to make further submissions in relation to the article 8 ECHR issue.