

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

AUDRIUS SLIOGERIS, SAULIUS PETRAITIS
and VITALIJUS PETRAITIS

STEPHENS J

Reporting Restriction

[1] I start by reminding that sections 1 and 8(6) of the Sexual Offences (Amendment) Act 1992, as amended, impose an automatic reporting restriction in this case. No matter relating to the complainant, your victim, shall, during her lifetime, be included in any publication, if it is likely to lead members of the public to identify her.

[2] In these sentencing remarks I will refer to the complainant, your victim, by the initials TR. I make it clear that those initials have no association with her real name. I have removed all references to dates, whether they are of the offence or of the trial, together with any reference to the locations at which the offences occurred, the age build or background of TR except her nationality.

Pleas of guilty

[3] Audrius Sliogeris on the third day of your trial, you pleaded guilty to four offences as follows:-

- (a) Raping TR.
- (b) Raping TR on a second occasion.
- (c) Kidnapping TR.
- (d) False imprisonment of TR.

[4] Saulius Petraitis on the second day of your trial, you pleaded guilty to four offences as follows:-

- (a) Raping TR.
- (b) Raping TR on a second occasion.
- (c) Kidnapping TR.
- (d) False imprisonment of TR.

[5] Vitalijus Petraitis on the third day of your trial, you pleaded guilty to the offence of raping TR. You also faced a count of false imprisonment in respect of which an order has been made that it should not be proceeded with without the leave of this court or the Court of Appeal. I make it clear that I sentence you solely in respect of the offence to which you pleaded guilty.

Factual background

[6] TR is a young Lithuanian woman who at the time lived and worked in Northern Ireland. Her home and her place of work were some distance away from the houses in which you lived. A Lithuanian, who has been identified by the names "Julius Jankauskas", first met TR when she was walking to work approximately 3 weeks before these offences were committed. He and another Lithuanian male, known as "Andrius", offered TR a short lift to work in their car. They had initially spoken to her in English and it must have been reassuring for her to discover that they were both Lithuanian. She was in a foreign country, lonely, adjusting to her new circumstances. She accepted the lift to work and she and Julius exchanged contact details and met that evening. During the course of that evening Julius put into operation an inhumane and depraved plan to induct TR into prostitution. In essence the aim was to cut her off from her family, her friends, her home and the person that she was. To utterly change her life. The plan involved the deployment of a number of techniques. The prospects of financial gain were held out to her. There were threats of violence and within a short space of time kidnapping and false imprisonment to facilitate the multiple rape of TR. The purpose of the multiple rapes, as far as Julius was concerned, being to force TR to experience intercourse during one day with numerous different men and thereby simulate and attempt to familiarise TR with the working life of a prostitute. Again as far as Julius was concerned to so degrade her in her own self esteem that she herself would perceive that prostitution was the only option open to her. To make her feel that there was nothing left of her and that she was completely helpless. To leave the fear with her that her family, her friends and people in general from her own home environment in Lithuania would find out what had occurred to her. That she would have to face the prospect that the way in which she was perceived in her own home environment would be irredeemably changed. The financial objective of the plan from the point of view of Julius being that once she was inducted into

prostitution he would sell her to another unnamed individual from the Republic of Ireland for €15,000. In short she would be “trafficked” by Julius.

[7] That first evening Julius recounted to TR how he had facilitated prostitution for a girl over a one week period with a particular client. That as a consequence Julius and the girl had then shared the money. Julius had further alarmed TR that evening by attempting to have sex with her but when she started to cry he took her home and purported to delete his contact details from her mobile telephone in an attempt to reassure her that he would not contact her again.

[8] After some days however Andrius, the other Lithuanian who had been in the car, telephoned TR and persuaded her to attend a birthday party on the basis that there would be lots of people, including girls, at that party. Also that Julius would not be there. TR agreed and she was collected in the same car by Andrius and by you Audrius Sliogeris. The party purported to be for your 21st birthday. There were 6 men and 2 women present. The party occurred at the house occupied by you Saulius Petraitis, you Vitalius Petraitis and Julius. There is no evidence that you Saulius Petraitis or you Vitalius Petraitis were present in the house on this occasion. However Julius turned out to be present. At that party TR was forced to perform oral sex on Andrius and was raped by him. As she was being raped other men who were present in the house came into the room to see what was going on. She believed that having been raped by Andrius that she was going to be raped by the other men in the house. She became hysterical and started to scream and shout. Other men came into the room including you Audrius Sliogeris. Andrius told them to leave because he had not finished. TR pleaded to have a shower. She went to the shower and a number of men were outside the bathroom door. Andrius then came into the bathroom and she again became hysterical. The other men tried to calm her down. She was then taken by you Audrius Sliogeris, Julius and another man to another house to help to calm her down. Thereafter she was taken back to her home by car by Julius and by you Audrius Sliogeris. During that journey Julius threatened TR that the rape that had been committed was completely shameful for her, that everyone in her area in Lithuania would know about it and that she would be unable to prove anything. You Audrius Sliogeris then expressed horror and astonishment at the fact that she had been raped in your house. Subsequent events make it plain that these expressions of astonishment and horror were not genuine. You accordingly knew that TR had been raped. You knew that she was distraught and hysterical as a result. You knew that she had been threatened by Julius. You knew that she had an additional vulnerability through that domination and abuse of her on this occasion. That was a particular vulnerability of which you were aware in addition to her vulnerability in that she was alone in a foreign county without the support of family or close friends.

[9] After a period of time Andrius started to call her saying he was sorry and that he wanted to meet her. Julius then began to ring from telephone numbers which TR didn't recognise as being his. Julius enquired as to how she was and that he had a good job offer for her in Dublin. That she would definitely earn a lot. He then started to threaten TR that "We will either meet with you or one day other people will meet you". He kept pressurising TR to meet him and then on a Saturday he rang her and said, either we meet that day and just talk or in five minutes he would ring some other people and they would take her. TR agreed to meet Julius in a pub in the town in which she lived provided that he was alone. TR thought that if she met him face to face, in a public bar she would be safe and she would be able to persuade him to leave her alone. She was afraid that if she did not agree to meet him it would be worse for her and she feared that he might arrange things so that lots of men would rape her, as appears to have been the position on the previous occasion. TR was feeling vulnerable and isolated. She did not want to tell her family in Lithuania that she was in trouble. Such were her concerns that she armed herself with a small kitchen knife in her handbag for protection should things become desperate for her.

[10] You Audrius Sliogeris and you Saulius Petraitis were in the Audi A8 driven by Julius to this meeting. You Saulius Petraitis heard the telephone call on loudspeaker in that car to the effect that TR did not wish to meet Julius. That he was threatening her. That she would only meet if he was alone. That she was being compelled by Julius to meet him. Both of you got out of the car some distance from the pub and bought a case of beer and cigarettes in an off licence. You waited for Julius to return. Julius went on and met TR. During the course of that meeting the threats changed. Julius stated that TR was to come with him or else he would make a call now to other people. He began counting off the seconds before he made the call. The threat was now quite specific - either she would have sex with him on one occasion and he would let her go or he would make a telephone call and she would have sex with many others. She tried to get away from him by going to the toilets intending to make a phone call but he prevented her by following her to the toilets. As a result of the pressure that Julius had exerted they left the pub and got into his car. He was driving and she was in the front passenger seat. Having persuaded TR to leave the bar on the basis that he was alone, Julius then after a short distance, stopped the car and both you Audrius Sliogeris and you Saulius Petraitis got into the back seats. This was planned in advance by Julius and that was a plan in which both you Audrius Sliogeris and you Saulius Petraitis participated. The prosecution concede that at this stage there is no sufficient evidence that either of you were aware of any part of Julius's plan to induct TR into prostitution. You were however aware that this was a plan to kidnap and falsely imprison TR to facilitate the rape by each of you of TR. To return to the sequence whenever you Audrius Sliogeris and you Saulius Petraitis got into the car TR became extremely alarmed fearing that she was going to be compelled to have sex with a

number of men. As soon as you both had got into the car Julius applied the central locking system and told TR that she could not get out. She started to scream, to kick out and to fight in an attempt to leave the car. The windscreen of the car was cracked by TR such was the force she was using to kick out. As events developed this damage to his car was used by Julius as a hold over TR in that he told her that she would need to pay for it. She attempted to open the door. She was physically restrained in the front seat by Julius whilst you Audrius Sliogeris and you Saulius Petraitis searched her handbag. You found the small kitchen knife and she was accused of wanting to kill Julius. She was then physically dragged by you Saulius Petraitis and you Audrius Sliogeris from the front of the car into the back seat, kidnapped and imprisoned sitting between you both. Her keys and mobile telephone were taken from her handbag and kept from her. Julius asked where her passport was. Her keys included a key to her flat and an offer was made that someone could go there to obtain the passport. TR said that it was kept by a friend. The enquiry about her passport, which both you Audrius Sliogeris and you Saulius Petraitis heard was particularly sinister. The cumulative effect was that TR was afraid that she would disappear and for her life.

[11] The car was then driven to an isolated mountainous area: a deserted track. Initially it was driven by Julius and you Audrius Sliogeris and you Saulius Petraitis, were in the back seat of the car. Directions as to how to get to the location were given by you Audrius Sliogeris. However you stopped and exchanged places so that you Audrius Sliogeris drove and you Saulius Petraitis sat in the front passenger's seat. Thereafter Julius forced TR to perform oral sex on him. During this journey TR had realised that her position was hopeless and she had stopped struggling. However she was crying and pleading to be let go. You Audrius Sliogeris and you Saulius Petraitis ignored all those pleas. Later in police interview you Saulius Petraitis agreed that she had pleaded to be let go but claimed falsely that if it was your choice you would have let her go, but that Julius was driving fast. However you later admitted that you had also driven the car on this journey. TR was undressed during this journey by Julius and when you arrived at this remote area you Audrius Sliogeris and you Saulius Petraitis left the car, leaving Julius in the back with TR. Julius then raped TR both anally and vaginally in the back of the car whilst you Audrius Sliogeris and you Saulius Petraitis were out of the car sitting on the boot waiting your turns. It is a feature of the attitude of Julius that he insisted on penetration of all three orifices as further demonstrated later when TR was later raped in the house and he was angry with her for refusing to permit another man to anally rape her. After Julius had raped TR in the back of the car then you Saulius Petraitis got into the back of the car whilst Julius and you Audrius Sliogeris sat in the front. You Saulius Petraitis then forced TR to perform oral sex on you and then raped TR whilst the other men watched. Throughout that rape Julius was talking directing you Saulius Petraitis as to what to do. You Saulius Petraitis then changed places with you Audrius Sliogeris and you Audrius

Sliogeris then forced TR to perform oral sex on you and then raped TR whilst the other men watched.

[12] On the journey to this remote area and before the rapes that occurred in the car, you Saulius Petraitis, were told to contact another Lithuanian to get him to bring a drug called "Wheel", believed to be "Ecstasy". This other Lithuanian arrived in a separate vehicle and brought a plastic bag containing a substance in a crushed paste form. TR was then given some of this by Julius in the back seat of the car when both you Audrius Sliogeris and you Saulius Petraitis were in the front. I consider that there is insufficient evidence to establish that either of you were aware that this drug was administered by Julius to TR. She refused to take it, and managed to rub most of it onto her clothing and indeed spit out what little was in her mouth. Traces of amphetamines were discovered when a later urine sample was analysed by Mr Young forensic scientist. TR recalls someone saying to her when she was made to take the paste "from this day on you'll be eating them every day". Again there is insufficient evidence as to when that remark was made or who made it and accordingly there is insufficient evidence that either of you Audrius Sliogeris or you Saulius Petraitis said or heard that remark.

[13] After she was raped in this remote area she was driven to a house which is occupied by you Saulius Petraitis, by you Vitalijus Petraitis and by Julius. During the course of that journey Julius was on his mobile telephone to people saying "I have a girl here, come over to my place, we'll have some fun". That was a quite clear invitation to rape TR in view of the fact that you Audrius Sliogeris and you Saulius Petraitis were aware of the rapes that had already occurred. You accordingly played your part in the plan to take TR to the house so that she could be raped again. TR was terrified. When you arrived TR was dragged out of the car and brought into the house. She was taken to a bedroom and she was there sequentially raped by at least 5 different men including you Audrius Sliogeris, you Saulius Petraitis and you Vitalijus Petraitis. Whilst she was being raped she could hear other men waiting to rape her. Whilst you Audrius Sliogeris raped TR she was crying and you waited for her to stop crying before raping her. You Saulius Petraitis had been in the bedroom waiting your turn whilst TR was being raped by one of the other men in the house. You forced TR to perform oral sex on you whilst the other man was raping her from behind. The roles were then reversed. You raped her whilst she was compelled to perform oral sex on the other man. This was a horrific experience of complete sexual, mental and physical domination. It involved a total degradation of her body, mind and her personality. Brutal sordid perversion.

[14] The prosecution have accepted that the role played by you Vitalijus Petraitis was less than the role of the other defendants. It is accepted that you were not present at the time when TR was abducted, or during the rape earlier at the isolated mountainous area. Accordingly you were not in the

Audi car when a number of the conversations took place. However when you arrived at the house in an intoxicated condition you were reckless in regard to the lack of consent from TR. You had means of knowledge from the general atmosphere, the fact that Julius was involved, and the manner in which a number of men were all gathered together in an adjoining room that the complainant was an unwilling participant who was being forced into submitting to the sexual acts but recklessly disregarded any issue of consent and participated also in rape and oral sex in that house. You raped TR after another individual known as Tomas. During your police interviews you finally said that you did not think that TR wanted to have sex with you because after all there was 5 guys and one girl – but you again said that “she could have told me something – please don’t do it”.

[15] TR was kept in that house throughout the next day, the Sunday. The total period of time over which she was falsely imprisoned by you Audrius Sliogeris and by you Saulius Petraitis was approximately 24 hours. The attitude of the occupants of the house, who were all men, was as if nothing untoward had happened. They watched TV and played computer games. They laughed and joked. TR asked to be let go and you Audrius Sliogeris said don’t worry no one will buy you especially if you cry and do not want to work. That she would be let go but that Julius would decide what to do with her. At one stage there was a conversation between Julius and you Saulius Petraitis, about a plan Julius had to try to get Euro 15,000 for her. Julius had received a text asking “what did she look like” and matters of that description. He read it out loud. You Audrius Sliogeris said no one would pay Euro 15,000 for her and that she was worth less than that. Indeed this attempt by Julius to sell TR as a prostitute for €15,000 involved a man who actually came to the house to look her over. TR, because she was in fear as to what would happen to her, made a suggestion to Julius that she might be able to get a friend to give her £5,000 to secure her release. There is no evidence that any of you were involved in this part of the plan to obtain £5,000. This was then pursued with Julius getting her to telephone him and read out a prepared story. She telephoned that individual and was then released in order to meet him. When she did meet him she was obviously distressed and the individual persuaded her to report the matter to the police. As it turned out she was neither sold nor ransomed but there was an attempt to do both.

[16] On each occasion the men involved in raping TR had used condoms other than when forcing her to perform oral sex on them. She was compelled to spit out ejaculate. TR was penetrated orally, vaginally and per anum but there is no evidence to conclude that any of these three defendants penetrated her anally.

[17] In sentencing each of you I take into account that the person with the greatest degree of culpability is Julius. The prosecution do not contend that at the time that TR was kidnapped on the Saturday that either of you Audrius

Sliogeris or you Saulius Petraitis were aware of or participated in a plan to induct TR into prostitution. It is contended and I accept that at that stage both of you planned with Julius to kidnap and falsely imprison TR for the purpose of raping her. In addition in the house on Sunday both of you were aware of the plan devised by Julius to sell TR as a prostitute. You continued her false imprisonment on that basis and that is also the aftermath of the rapes which you inflicted on her.

Sentencing guidelines in relation to the offence of rape

[18] In fixing the sentences to impose in relation to the offence of rape I have sought to follow the guideline contained in the decisions of the Court of Appeal in Attorney General's Reference (No 2 of 2004) (Daniel John O'Connell) [2004] NICA 51 and Attorney General's Reference (No 3 of 2006) (Michael John Gilbert) [2006] NICA 36. At paragraph [19] of O'Connell's case it was stated that sentencers should apply the *starting points* recommended by the Sentencing Advisory Panel in England and Wales in its 2002 guidelines ("the 2002 guidelines"). For rape these are:-

- (a) 5 years imprisonment for an offence with no aggravating or mitigating features.
- (b) 8 years imprisonment, for cases where any of a number of certain specified aggravating features are present.
- (c) 15 years plus for a defendant who has carried out a campaign of rape.
- (d) Life imprisonment, which is said to be "not inappropriate" where the offenders behaviour "has manifested perverted or psychopathic tendencies or gross personality disorder, where he is likely, if at large, to remain a danger to women for an indefinite time."

[19] Since the decisions in O'Connell's case and Gilbert's case and in April 2007 new guidelines were published by the Sentencing Guidelines Council in England and Wales ("the 2007 guidelines") I adopt a similar approach to the 2007 guidelines as I did in the case of R v. AB [2007] NICC 26. Accordingly I have given consideration to the relevant differences between the 2002 guidelines and the 2007 guidelines when considering the sentences to impose on each of you. I apply the 2002 guidelines but I also take into account the 2007 guidelines in so far as they do not conflict with the 2002 guidelines and in so far as the 2007 guidelines are not effected by the differences which now exist between the law in England and Wales and the law in Northern Ireland

in relation to sexual offences such differences including different sentencing options.

[20] I do not propose to apply the 2002 guidelines in a mechanistic manner. In that respect the approach that I adopt is set out in paragraph 1.3 of the 2007 guidelines as follows, namely:-

“For these types of offence (namely sexual offences) more than for many others, the sentencing process must allow for flexibility and variability. The suggested starting points and sentencing ranges contained in the offence guidelines are not rigid, and movement within and between ranges will be dependent upon the circumstances of individual cases and, in particular, the aggravating and mitigating factors that are present.”

[21] In assessing the gravity of the offence of rape I will at all stages give consideration to the broad three dimensions set out by the Court of Appeal in England and Wales in R v. Millberry and others [2003] 2 Cr App R (S) 31 as approved by the Court of Appeal in O’Connell’s case and Gilbert’s case. Those broad three dimensions are as follows namely:-

- (i) The degree of harm to your victim.
- (ii) Your level of culpability.
- (iii) The level of risk posed by you to society.

[22] In approaching the dimension of culpability I bear in mind the following passage in the 2007 guidelines:-

“1.12 Culpability is determined by the extent to which the offender intends to cause harm – the worse the harm intended, the greater the offenders’ culpability.”

[23] The guidelines at paragraph 1.12 then continue:-

“Sexual offences are somewhat different in that the offender’s intention may be to obtain sexual gratification, financial or some other result rather than to harm the victim. However, where the activity is in any way non consensual, coercive or exploitative, the offence is inherently harmful and therefore the offender’s culpability is high. Planning an offence makes the offence more

highly culpable than engaging in opportunistic or impulsive offending.”

[24] In AG’s Ref No 3 of 2006 (Gilbert) [2006] NICA 36 at paragraph [23] Kerr LCJ stated:

“The effect on sentence of the presence of several aggravating features is not to be calculated simply by an arithmetical tally of the number of such features. The degree of seriousness of each of the aggravating factors must also be taken into account.”

[25] In R v Gallagher [2006] EWCA Crim 2664 counsel on behalf of the defendant appellant accepted that, depending upon the particular factors and aggravation involved in any case, it is possible that an eight-year starting point could be aggravated even beyond the 15-year point. The Court of Appeal in that case accepted that concession as appropriate and stated that it

“is confirmed by what Lord Woolf CJ said at paragraph 24 of Millberry, where he pointed out that, in a really bad case, the seven grounds mentioned for invoking the starting point at eight years could mean that a higher starting point could be appropriate. That is before taking account of the aggravating factors listed in Millberry at paragraph 32 “

[26] In considering the question as to whether the sentences that I impose on you Audrius Sliogeris and on you Saulius Petraitis should be consecutive or concurrent I have sought to apply the guidance of the Court of Appeal in R v Samuel Robinson. In that case Carswell L.C.J. quoted with approval a passage from the judgment of Hutton LCJ In Attorney-General's Reference (No. 1 of 1991) [1991] NI 218. Hutton LCJ summarised the matter in this way at page 224G-225A:

“We are of opinion that it would be undesirable in this jurisdiction to limit the discretion of the trial judge as to whether he should impose concurrent or consecutive sentences. The overriding concern must be that the total global sentence, whether made up of concurrent or consecutive sentences, must be appropriate. In some cases a judge may achieve this result more satisfactorily by imposing consecutive sentences. In other cases he may

achieve it more satisfactorily by imposing concurrent sentences”.

In your cases I have concluded that it is appropriate to impose concurrent sentences. In arriving at that conclusion I have borne in mind that separate punishment for your offences must be by the imposition of concurrent sentences of sufficient length as to ensure that you do not escape punishment entirely by subsuming the sentence for one offence into the penalty imposed for the other. I have considered the totality of your offending behaviour in arriving at the total global sentence.

[27] The 2002 guidelines advises “a 15 year plus” starting point for an offender “who has carried out a campaign of rape”. The 2007 guidelines define the type/nature of activity warranting a 15 year starting point as “repeated rape of same victim over a course of time or rape involving multiple victims”. It also advises a sentencing range of 13-19 years custody. There can be a campaign of rape even though the person or persons conducting that campaign does not physically commit all the rapes. There can also be a short or long campaign. The campaign can be against a single woman. I do not consider that the conduct of you Audrius Sliogeris and you Saulius Petraitis is a campaign of rape. I will apply an 8 year starting point in relation to both of you. However when considering the aggravating factors in your cases I will take into account that you raped TR knowing either that she had been or was to be repeatedly raped.

[28] In relation to you Vitalijus Petraitis your counsel has accepted that an 8 year starting point is appropriate.

[29] Having taken the guidelines into account I have stood back and looked at the circumstances as a whole. I consider that the sentences which I will impose on each of you are appropriate having regard to all the circumstances. I also bear in mind the totality principle so that in respect of you, Audrius Sliogeris, and you, Saulius Petraitis, when I am sentencing you for more than one offence and in fixing the total sentences that I will impose on you I will bear in mind the totality principle to ensure that the total sentences are proportionate to the offending behaviour and properly balanced.

[30] I have given consideration as to whether I should make an order that instead of being granted remission of your sentences you shall, on the day on which you might have been discharged if the remission had been granted, be released on licence under Article 26 of the Criminal Justice (Northern Ireland) Order 1996. In arriving at a decision in respect of that question I have sought to apply the guidance in Attorney General’s Reference Number 2 of 2004 (Daniel John O’Connell) [2004] NICA 15. At paragraph [23] of the judgment of the Court of Appeal Kerr L.C.J. contrasting an order under Article 26,

release on licence, and an order under Article 24, custody probation, stated that:

“Before the court makes an order under Article 26 it must have regard to the need to protect the public from serious harm and the desirability of preventing the commission of further offences and securing the offender’s rehabilitation. It is implicit in the legislation that the court should conclude that these objectives could not be achieved by the making of an order under Article 24. While, therefore, the text of Article 26 does not characterise these as essential prerequisites, the long-term risk of re-offending and the need to protect the public indefinitely will normally be present before this provision is invoked.”

Recommendation for deportation

[31] Section 3(6) of the Immigration Act 1971 , as amended by section 39(6) of, and paragraph 2 of Schedule 4 to, the British Nationality Act 1981 provides

“a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of 17, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.”

This court is empowered to make such a recommendation and in considering whether I should do so I have borne in mind that very different principles apply to citizens of the European Union than to those who have no right to enter or remain here. The principles that apply to persons who are not citizens of the European Union were set out by the Court of Appeal in England and Wales in R v Carmona [2006] EWCA Crim 508, [2006] 1 W.L.R. 2264, which the Court of Appeal concluded in R. v. Wang Huan [2007] NICA 36 should be followed in this jurisdiction. For persons who are not citizens of the European Union, when considering whether continued presence is contrary to the public interest, there is a strong element of deterrence. Lord Justice May in N (Kenya) v Secretary of State for the Home Department [2004] EWCA Civ 1094 at [64]-[65] stated:

“64. ... Where a person who is not a British citizen commits a number of very serious crimes, the public interest side of the balance will include importantly, although not exclusively, the public policy need to

deter and to express society's revulsion at the seriousness of the criminality.”

65. The risk of reoffending is a factor in the balance, but, for very serious crimes, a low risk of reoffending is not the most important public interest factor.”

For citizens of the European Union restriction of the freedom of movement and residence “must be based exclusively on the personal conduct of the person concerned,” see regulation 21(5)(b) of the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) transposing into national law Article 27(2) of Directive 2004 38/EC of 29th April 2004 (“the Directive”). Furthermore “... Community law precludes the expulsion of a national of a Member State on general preventive grounds, that is say an expulsion ordered for the purpose of deterring other aliens ... especially where that measure has automatically followed a criminal conviction ... ,” see Omer Nazli and Stad Nurnberg C340/97, [2000] ECR I , 957. The element of deterrence does not apply in relation to a citizen of the European Union.

[32] You are citizens of the European Union and Mr Justice Blake in giving the judgment in the Court of Appeal in England & Wales in R v Bogoslov [2008] EWCA Crim 676 stated at paragraphs [13]

“[13] ...The rights of entry and residence within the Member States of the European Union are very important rights which can only be derogated from in strictly confined circumstances, according to the principles of community law reflected in both the legislation and the case law of the European Court of Justice.”

[33] The principles of community law reflected in legislation are contained in the Directive. The provisions of the Directive required transposition into national law and were so transposed by the 2006 Regulations which came into force on 30th April 2006. In so far as your cases are concerned the relevant Articles in the Directive are contained in Chapter VI. That Chapter is entitled “Restrictions on the right of entry and the right of residence on grounds of public policy, public security or public health.” The relevant Articles are as follows:-

“Article 27

General principles

(1) Subject to the provisions of this Chapter Member States may restrict the freedom of movement and residence of Union citizens and their family members irrespective of nationality, on grounds of public

policy, public security or public health. These grounds shall not be invoked to serve economic ends.

(2) Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted."

Article 28

Protection against expulsion

"(1) Before taking an expulsion decision on grounds of public policy or public security, the host Member State shall take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural interrogation into the host Member State and the extent of his/her links with the country of origin."

[34] The principles of community law reflected in the case law of the European Court of Justice were summarised in the case of Omer Nazli and Stad Nurnberg C340/97, [2000] ECR I, 957. That case involved a Turkish national, who had treaty rights under the association agreement and who had committed drug offences. The court stated at paragraphs 57 to 59:

"57. In the context of Community law and, in particular, of Article 48(3) of the Treaty, it has been consistently held that the concept of public policy presupposes, in addition to the disturbance of the social order which any infringement of the law involves, the existence of a genuine and sufficient serious threat to one of the fundamental interests of society ...

58. While a Member State may consider that the use of drugs constitutes a danger for society such as to justify, in order to maintain public order, special measures against aliens who contravene its laws on

drugs, the public policy exception, like all derogates from a fundamental principle of the Treaty, must nevertheless be interpreted restrictively, so that the existence of a criminal conviction can justify expulsion only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy ...

59. The Court has thus concluded that Community law precludes the expulsion of a national of a Member State on general preventive grounds, that is say an expulsion ordered for the purpose of deterring other aliens ... especially where that measure has automatically followed a criminal conviction ...”

[35] In R v Carmona it was apprehended that the provisions of the Directive would have a significant effect on the exercise by the courts of the power to make a recommendation for deportation, since it would not be right to make a recommendation for deportation in circumstances where the Directive precludes actual deportation. I consider that I should not exercise my discretion to make a recommendation for deportation in circumstances where the Directive or the case law of the European Court of Justice precludes actual deportation.

[36] In R v Carmona reference was made to the Sentencing Advisory Panel which had issued a consultation paper on recommendations for deportation. The Panel's advice had not been published but the Court of Appeal was told that it was currently being forwarded to the Sentencing Guidelines Council. I note that in the minutes of its meeting on 16 November 2007 the Sentencing Guidelines Council recorded under the heading *Recommendations for Deportation* that -

“8.1 In March 2007, the Council decided to defer consideration of this topic until the enactment of the UK Borders Bill. The Bill received Royal Assent on 30 October and the Act is expected to come into force in early 2008. Although the power to make a recommendation for deportation has not been repealed, the expectation is that it will rarely need to be exercised given the large number of offences covered by the automatic deportation power.

8.2 In the light of this development, the Council agreed that there is no need to develop a guideline and that the topic should be removed from the work

programme. A note will be added to the website explaining the Council's decision."

Accordingly there are no sentencing guidelines from the Sentencing Guidelines Council.

[37] Deportation of criminals is now subject to Part V of the UK Borders Act 2007 which provides for automatic deportation and which extends to Northern Ireland. The UK Borders Act 2007 (Commencement No. 3 and Transitional Provisions) Order 2008 brought sections 32 - 39 into force on 1 August 2008. Section 32(5) requires the secretary of state to make a deportation order in respect of a "foreign criminal". The definition of a foreign criminal includes a person who is not a British citizen and who has been sentenced to a period of imprisonment for at least 12 months. Automatic deportation under section 32(5) does not apply in a number of circumstances including where the removal of the foreign criminal from the United Kingdom in pursuance of a deportation order will breach rights of the foreign criminal under the community treaties. Accordingly in this case as each of the defendants will be sentenced to more than 12 months in prison there will be a requirement for the secretary of state to make a deportation order unless deportation would breach community treaties or convention rights. The court still has discretion to recommend deportation but in the vast majority of cases such discretion would not be exercised in view of the provisions as to automatic deportation.

[38] I turn to consider each of your cases. First as to whether I should consider the matter at all in view of the requirement on the secretary of state to make a deportation order. Secondly as to whether in the circumstances I should make a recommendation. I have concluded that none of you have any appreciable insight into your criminality despite the passage of an appreciable period of time and the trial process. This leads me to the conclusion that the further passage of years will still leave all three of you as a serious risk to society. In those circumstances I consider that it is appropriate to consider making a recommendation. I have taken into account the factors set out in this judgment. I consider that a recommendation is a proportionate response and accordingly I make a recommendation for the deportation of all three of you at the conclusion of your sentences.

Personal Background of the Offenders

[39] You, Audrius Sliogeris, are a Lithuanian national and you were raised in the Telsiai area of Lithuania. Your date of birth is 16th September 1985 which makes you now 23 years of age. You are a single man. Your parents separated six years ago. You describe positive and supportive family relationships when growing up. You state that you experienced a very happy childhood and adolescence and always had what you needed. You were educated in Lithuania. You left school at the age of seventeen prior to

completing any formal examinations. Your parents separated six years ago in 2002, when your father left the family home having begun a relationship with another woman. You maintain regular contact with your father and he has visited you in custody. Your sister, Aiva Sliogeryte, moved to Northern Ireland in approximately 2001. You and your mother, Birtute Sliodeauine, moved to Northern Ireland in 2002 with the intention of returning home after three months. You have both remained in Northern Ireland. You state that you quickly settled into the community and formed friendships with other foreign national workers. Prior to these offences you were in a relationship but that has since ended with your ex-partner returning to Lithuania. You maintain telephone contact with her. You gained employment and were at the time of these offences employed as a fork lift truck driver. You enjoyed this work and had no financial concerns. Prior to your arrest your mother, your sister, her partner and you all lived in the same house in Northern Ireland. You had planned to make a permanent home for yourself in Northern Ireland. Your father remains in Lithuania but your mother and sister together with her partner live in Northern Ireland.

[40] You, Saulius Petraitis, are a Lithuanian national and you were raised in the Telsiai area of Lithuania. You were born on 18 May 1984 and are now aged 24. You describe a happy and contented childhood and adolescence. You had a conservative family upbringing. You are a cousin of Vitalijus Petraitis. Your respective fathers are brothers and your respective mothers are sisters. You were educated in Lithuania. You attended a local school until you were seventeen years old. You then attended college and became a qualified electrician. You moved to Northern Ireland at the age of 20 in 2004. You gained employment. You now have a very good grasp of the spoken English language. You acknowledge that prior to these offences alcohol consumption was a problem for you. You became intoxicated most weekends and drinking was interfering with your employment and health. You maintain telephone contact with your parents who remain in Lithuania. Your brother is also in Lithuania. Your uncle and aunt, the parents of Vitalijus Petraitis, remain in Lithuania. You had formed a relationship with a Lithuanian, which lasted for four years, but she returned to Lithuania. You have no ongoing relationship.

[41] You, Vitalijus Petraitis, are a Lithuanian national and you were raised in Kelme in Lithuania. You were born on 16 March 1986 and are now aged 22. Your father worked as a police officer in a neighbouring town until becoming a farmer five years ago, whilst your mother worked as a cleaner in a local High School. You describe a conservative upbringing and you were educated in Lithuania until the age of nineteen. Throughout your childhood and adolescence you spent summer holidays with your cousin, Saulius Petraitis, who lived in a town some 60 km away. You regarded him as a surrogate brother. Your parents separated in 2005. This was an amicable separation but it influenced you to seek independent work abroad. You came

to the Republic of Ireland in October 2005 and moved to Northern Ireland. You gained employment as a labourer. Both of your parents and your brother remain in Lithuania. You are closest to your mother. Your uncle and aunt, the parents of Saulius Petraitis, remain in Lithuania. You state that your family are aware of the circumstance of your present detention.

Attitude of the Offenders to the Offences and Risk of Further Offending

[42] You, Audrius Sliogeris, have described your behaviour as the biggest mistake of your life. However, Gillian Montgomery, the probation officer considers that this is primarily due to the consequences for you as opposed to genuine concern for TR. You denied all involvement in these crimes when interviewed by the police. You expressed no remorse to the police. During your police interviews you denied knowing seeing or being in the company of TR. You put forward an alibi defence for the Saturday and the Sunday. You denied that you were in the town from which TR was abducted on the Saturday. You agreed that on a few occasions prior to those dates you had been at the house occupied by Saulius Petraitis, Vitalius Petraitis and Julius. That on one of those occasions, approximately 6 months previously, you had sex in a bedroom in that house. You consented to an identification procedure and were identified by TR as one of her attackers but maintained your alibi and your denial. You were confronted with the contents of the interviews with Saulius Petraitis and Vitalius Petraitis which contradicted what you were asserting. Again you maintained your denials. You were confronted with CCTV footage showing that you and Saulius Petraitis had been in the town from which TR was abducted on the Saturday. It also showed the car which was used in that abduction. You denied that the CCTV footage was of you. Indeed you denied that you had ever worn a distinctive black and white striped jumper shown in the CCTV footage. You were confronted with the fact that you had been seen by a Garda officer in the Republic of Ireland wearing that jumper. You maintained your denials throughout the course of the interviews. It subsequently transpired that a used condom recovered in a rubbish bag in the back yard of the house occupied by Saulius Petraitis, Vitalius Petraitis and Julius in which TR had been imprisoned and raped contained semen which provided a DNA profile which matched yours. You informed the probation officer that you thought your behaviour was acceptable at the time, but now realise that such behaviour is "wrong". However you were unable to elaborate on what "wrong" actually meant to you. During the plea in mitigation on your instructions you continued to attempt to minimise your involvement in these offences. I do not accept that you are remorseful for what you have done. In relation to the risk of re-offending Gillian Montgomery has assessed and I find that you are currently at high risk in the future of committing an act of serious harm. I form that view due to the seriousness of the offences that you have committed and the following factors:

- (a) Lack of appropriate sexual boundaries particularly regarding consent.
- (b) Distorted attitude to females.
- (c) Sexual entitlement beliefs.
- (d) Inability to remove yourself from inappropriate situations.
- (e) Lack of victim awareness.

[43] You, Saulius Petraitis, now view your behaviour as wrong but you minimise the seriousness of your behaviour. You lack insight into the gravity of your offences. You describe your behaviour as a mistake but I consider that to a large extent this is related to the consequences which you now face rather than opposed to genuine remorse for your actions or the effect on TR. I do however accept a degree of remorse on your part. In arriving at that assessment I take into account that to the police you admitted doing a bad thing, raping TR. However your defence statement asserted that the sexual intercourse with TR was consensual and you continued to plead not guilty until the second day of your trial. In relation to the risk of re-offending Gillian Montgomery has assessed, and I find that you currently pose a high risk of serious harm to others. I form that view due to the seriousness of the offences that you have committed and the following factors:

- (a) Your distorted attitude about your behaviour. Lack of appropriate sexual boundaries particularly regarding consent.
- (b) Your distorted attitude about the role of females.
- (c) Your sexual entitlement beliefs
- (d) Your lack of victim awareness.
- (e) Your lack of consequential thinking.

[44] You, Vitalijus Petraitis, have expressed regret at the way that you acted in respect of TR. However it is evident that, although you have some regrets at having sexual intercourse without establishing consent, your overall concerns are in relation to the other defendants and your own welfare. I do not accept that you have a high level of remorse for what you have done. In relation to the risk of re-offending Mary Doran, probation officer, has assessed, and I find that you currently pose a high risk of committing an act of serious harm to others. I form that view due to the seriousness of the offences that you have committed and the following factors:

- (a) Your distorted attitude about your behaviour.
- (b) Your lack of empathy towards your victim.
- (c) Your lack of a pattern of emotionally intimate relationships with women.
- (d) Your sexual entitlement beliefs
- (e) Your lack of victim awareness.

(f) Your lack of consequential thinking.

Victim Impact

[45] A Victim Impact Report dated 15th May 2008 has been prepared by Marcella Leonard, BSc (HONS).C.Q.S.W., MSc. AASW. PG Dip. ATSO. PTA., ASW, a Social Work Consultant. She has 20 years experience of working in the field of sexual abuse, sexual offending and sexual dysfunctions. She examined TR and states that –

“In working with victims of sexual abuse, childhood trauma, sexual assault and marital sexual assaults, there are common themes which present with the victims of these experiences which TR clearly demonstrated. The most significant aspect of sexual abuse / trauma is the constant living with ‘sickening anticipation’ both at the time of the abuse but it is this sickening anticipation which causes the long term impact of sexual abuse/trauma. When a person is sexually abused for the first time, the body is not prepared for such an event and as such physiologically it reacts to the trauma in many ways such as shock, denial that it happened, disbelief, fear and shame. However, if the abuse is repeated as well as constant reminders of the abuse such as having to see or have contact with the perpetrator the victim begins to live in a constant state of anticipation of the sexual abuse/trauma happening again. The fact then for a victim that the abuse does happen again, as in TR’s case, further deepens this sense of ‘sickening anticipation’ never knowing when, not if, its going to happen again. To try to live with this sick feeling in your body is extremely difficult particularly if the victim is trying to not tell the secret for fear of reprisal by the perpetrators. This is why victims will utilise a range of coping strategies to cope with this ongoing sickening anticipation such as self harm, substance abuse, withdraw from others, anxiety, depression to name a few.”

[46] Marcella Leonard found that TR exhibited the recognised characteristics of a person suffering from exposure to severe trauma. I set these out at some length:

1. “Strongly Visualised or otherwise repeatedly perceived memories:

This is where victims of trauma are stimulated by reminders of the trauma to the degree that they describe reliving the actual incidents over again. ...

With TR, in recounting the extensive sexual abuse/trauma she was made to endure, she identified constant reminders of the abuse such as the smell of the room she had to lie in, the smell of the perpetrators, the car she was taken in, when her boyfriend touches her and the physical pain she experienced having to experience for the first time anal penetration.

... TR has a very vivid memory of exactly what happened to her to the extent in interview you could almost feel the physical pain she experienced by being raped by 6/7 men repeatedly over a 28 hour, ...

2. Trauma specific fears

These are fears which are specific to the actual trauma experienced, for TR she describes living in fear in between the incidents, absolute sense of being alone, in a strange country, unable to tell anyone, unable to know that she would be protected if she did come forward. TR would state during each incident she was in fear for her life, fear of what sexual practice she would be forced to do, the physical pain and being with men from her own country whom she should have been able to trust.

TR described in harrowing terms her 28 hours of being repeatedly, systematically anally and vaginally raped by 6/7 men. She described lying on a bed, having no idea who was coming through the door to 'have their turn', fear of what sexual act she was going to be made to do. TR described her coping strategy during these rapes as focusing on looking out of the window so she could desensitise her body to the physical pain as well as the psychological terror she was experiencing. Yet this coping strategy further angered her perpetrators because they complained she was not 'engaging' in the sexual acts but 'just lying there'. TR stated that in between each man she begged to go to the shower but even then the perpetrators kept shouting at her to hurry up and gave her no privacy to undertake personal hygiene. TR described bleeding as a result of the sexual abuse

and the fear of what extensive physical harm they were causing her.

TR then discussed the greatest fear and panic was when another man was brought from Dublin to 'buy' her as a prostitute but she stated that due to her distressed state he did not want her. For a female, who has just been repeatedly raped, forced to perform sexual acts, ..., then made to sit with these men whilst they bargain a price for her to work as a prostitute, there is no degradation worse. TR firmly believed she was going to be sold as a prostitute and never be able to see her mother and brother again. In interview her distress and absolute sense of complete panic was palpable that she was going to be sold and never free again.

After the man decided he did not want to buy her, she had to remain in the house with her perpetrators, she described having to sit on the settee whilst they laughed, chatted, played Playstation games while she sat never knowing when or indeed if they would free her.

... . She discussed her fear that current or future partners who deem her 'damaged goods' if they knew about the abuse.

Similarly to 95% of women who have been sexually abused, TR has developed anxiety and fear in relation to intimacy with a partner. She is worried about the possible physical harm she has suffered and whether this may affect her being able to ever enjoy sexual intercourse again. TR ... still has a sense of the weight of the perpetrators on her as well as the physical pain due to the sexual acts she had had to endure for the first time.

One of the most significant fears for TR is a real sense of being in danger from the perpetrators on their release from possible custody. TR is petrified of their power and ability to seek her out and harm her when they are released. Since her disclosure, TR had to remain in witness protection due to the very real fear of being found by the perpetrators. TR's fear of harm was very real as during the abuse and in between the

incidents she was constantly threatened by them. During the abusive incidents TR was subject to physical abuse as well as the sexual abuse therefore she was very aware of the real threat of the perpetrators or their associates harming her or her family.

3. Changed attitudes about people, aspects of life and future.

This is the aspect of working with victims which is the most difficult to assist them to recover from. This aspect considers the sadness of having suffered a trauma and the constant reflection on life, people and events in the light of that trauma. Deep sadness is often evident as well as the wishful 'what if' this trauma had not happened to me, how different would my life be.

[47] Marcella Leonard concludes -

"TR came to N. Ireland as an energetic, quiet, sexually naive young ... lady but has left a severely traumatised, fearful, sad and hurt person. As stated earlier, in interview she was so keen to stress her gratitude towards the PSNI officers who have travelled this journey of disclosure with her However, the fact that her perpetrators are Lithuanian, she realistically recognises their return to Lithuania after they serve whichever sentence the court deems appropriate. This has affected her outlook on life at home due to the perpetrators being from there as well, fear of their threats towards her and her family and the impact on her ability to plan or consider the future with this fear being so real for her."

Procedural requirements for custodial sentences

[48] Pre sentence reports have been made available to me in respect of each of you. The report in respect of you, Audrius Sliogeris was prepared by Gillian Montgomery, probation officer. The report in respect of you, Saulius Petraitis was also prepared by Gillian Montgomery. The report in respect of you, Vitalijus Petraitis was prepared by Mary Doran, probation officer. I have considered all of them in accordance with the provisions of Article 21 of the Criminal Justice Order (Northern Ireland) 1996.

[49] In determining your sentences I have borne in mind the provisions of Article 19 (2)(a) and (b) and Article 19(4) of the Criminal Justice (Northern Ireland) Order 1996. I consider that all of the offences before me now are so serious in their content that only a custodial sentence is justified. I am of that opinion for the reasons I have set out in this judgment. I repeat you all have committed most serious offences. You are all a danger and a risk to others.

[50] As you each must receive a substantial period of imprisonment in excess of 12 months I am required by statute to consider whether I should impose a Custody Probation Order. Such an order is considered in the pre-sentence report. The Court of Appeal pointed out in R v Quinn [2006] NICA 27 at paragraph 29 that:-

“A Custody/Probation Order should only be made where it is considered that the offender would benefit from probation at the conclusion of a period of custody and that it is deemed necessary to enable him to reintegrate into society or because of the risk that he would otherwise pose”.

I note that in each of the pre sentence reports it is stated in respect of each of you that -

“... a Custody Probation Order is not considered to be an appropriate option”

I have taken those reports into account and have concluded that none of you would benefit from probation at the conclusion of a period of custody. In arriving at that conclusion I have also taken into account that none of you has demonstrated any appreciable insight into your behaviour and accordingly I do not consider that you would benefit from probation. It has not been suggested on any of your behalves by experienced counsel that custody probation is appropriate. You are each of you assessed by the probation service as posing a high risk of serious harm to others. Probation would not an appropriate option to deal with that risk.

The Starting Point

[51] I have already set the starting points in respect of each of you. In so far as I list the aggravating features below in a composite way I do so expressly taking into account that aggravating features setting the starting point must not be included again in respect of the overall sentence.

Aggravating Features Relating to the Offenders

[52] None of you have any relevant criminal records.

Aggravating Features Relating to the Offences

[53] I consider that the following aggravating features are present:

- (a) **National element and deliberate targeting of vulnerable individual.** In this case there is a national element in that all of you and TR are Lithuanian. The offence was not motivated by hostility towards or a prejudice against Lithuanians. However I consider that all of you did exploit the vulnerability of a fellow national who had no close ties with the local community. In addition you Audrius Sliogeris exploited the vulnerability that you knew had been created in TR by virtue of the fact that she had previously been raped. In respect of you Audrius Sliogeris and you Saulius Petraitis I consider this to be a serious aggravating feature. The degree of exploitation of TR's vulnerability is less in respect of you Vitalijus Petraitis but this feature is still present.
- (b) **National element and trust.** The national element gives rise to an element of abuse of trust in that TR believed that she could rely on her fellow nationals. You demonstrated to her that she could not trust her fellow nationals. This aggravating feature is present in respect of all of you though to a lesser extent in respect of you Vitalijus Petraitis.
- (c) **Planning.** I make it clear that the plan was devised by Julius. I have held that you Audrius Sliogeris and you Saulius Petraitis associated with and participated in planning to the extent which I have outlined. The prosecution accept that you Vitalijus Petraitis were not involved in planning.
- (d) **Group or gang offending.** You Audrius Sliogeris and you Saulius Petraitis were a part of a group or gang. Both of you together with Julius made a total of three who kidnapped and raped the victim. Additionally you were part of a group of at least 5 men who further raped the victim at the house. This aggravating factor is present in respect of both of you and it is a serious aggravating factor. In respect of you Vitalijus Petraitis, the

prosecution accept that you were reckless as to lack of consent when you raped TR. You were reckless as to whether TR had been raped by others prior to raping her. On that basis I take that as an aggravating factor in relation to your culpability.

- (e) **Professional offending and commission of the offence for financial gain.** You Audrius Sliogeris and you Saulius Petraitis participated in false imprisonment of TR after you were aware of Julius's plan to obtain money. That was the aftermath of the rapes which you committed. There is no evidence that either of you would have benefited financially. I do not consider that this is an aggravating feature under this heading but I do consider it to be an aggravating feature under the heading of additional degradation of the victim. On that basis that aggravating factor is present in respect of the false imprisonment on the Sunday and in the aftermath of the rapes that you committed. I consider it to be a serious aggravating feature. This aggravating feature does not apply to you Vitalius Petraitis.
- (f) **Commission of an offence while under the influence of alcohol or drugs.** You Audrius Sliogeris and you Saulius Petraitis took alcohol purchased by you at the off licence on the evening of the Saturday and were part of the group consuming alcohol and smoking in the room next to where the victim was being raped in the house. There is no evidence that you were intoxicated. I do not consider on the facts of this case that this aggravating feature is present. You Vitalius Petraitis were intoxicated though there is no evidence that this increased the distress of TR or caused any additional risk to her. Again on the facts of this case I do not take it into account as an aggravating feature.
- (g) **Sustained or repeated assaults on the same victim.** This aggravating factor is clearly present in respect of all three of you. I consider it to be a serious aggravating feature.
- (h) **Location of the offence in an isolated place.** This aggravating factor is present in respect of you Audrius Sliogeris and you Saulius Petraitis in respect of the isolated mountainous area. I consider this to be a serious aggravating feature in respect of both of you.

- (i) **An especially serious physical or mental effect on the victim.** I have set out at length the effects on TR. Put simply all of you have irrevocably changed her life. This factor is particularly present in respect of you Audrius Sliogeris and you Saulius Petraitis. I consider it to be a serious aggravating feature in respect of both of you.
- (j) **Presence of others.** This aggravating feature is present in relation to you Audrius Sliogeris and you Saulius Petraitis in respect of the rapes in the car and also in respect of you Saulius Petraitis in relation to the rape of which you are guilty in the house. TR was raped not only serially but also with other persons physically present watching and giving instructions. In addition in respect of you Saulius Petraitis you participated in joint sexual activity that is that you compelled TR to perform oral sex on you whilst she was being raped by another. You then raped TR whilst she was being compelled to perform oral sex on another. I take into account as an aggravating factor the presence of others in respect of you Audrius Sliogeris and you Saulius Petraitis. I also take into account the aggravating factor of joint sexual activity in respect of you Saulius Petraitis. These are serious aggravating features. This aggravating feature does not apply in respect of you Vitalijus Petraitis.
- (k) **Additional degradation of the victim.** Oral sex does not presently constitute “rape” in this jurisdiction, unlike England & Wales. By statute it is not as serious as rape in Northern Ireland. I consider that forcing TR to take each of your penises into her mouth is, in each instance, additional degradation. I take that aggravating factor into account in respect of all of you. I consider it to be a serious aggravating feature. As I have indicated I consider the discussions as to money on the Sunday to be a serious aggravating feature in respect of you Audrius Sliogeris and you Saulius Petraitis.
- (l) **TR was stripped completely naked** both in the isolated mountainous location and in the house and I take that aggravating factor into account in respect of all of you.
- (m) **Ejaculate.** The fact that an ejaculate was produced makes the offences more serious and I take that aggravating factor into account in respect of all of you.

- (n) **Abduction and detention.** This aggravating feature is present in respect of you Audrius Sliogeris and you Saulius Petraitis. TR was kidnapped and taken away in a car. In addition she was subject to false imprisonment. I take that aggravating feature into account in respect of you Audrius Sliogeris and you Saulius Petraitis. I consider it to be a serious aggravating feature.
- (o) **Background of intimidation and coercion.** There was a general threatening atmosphere in respect of TR and you Audrius Sliogeris and you Saulius Petraitis, whilst not making those threats raped TR against the background of those threats. This aggravating feature is present in respect of you Audrius Sliogeris and you Saulius Petraitis.
- (p) **Drugs.** For the avoidance of any doubt I do not take into consideration as an aggravating feature the administration of a drug to TR by Julius.

Mitigating Features in Relation to the Offence

[54] Condoms were used in relation to the rapes.

Mitigating Features in Relation to the Offenders

[55] None of you has any or any relevant previous convictions. Each of you has had the benefit of a good education, a positive and supportive family background and upbringing and each has a good history of employment. None of you are able to offer a deprived childhood by way of explanation for your behaviour. In so far as you had an association with Julius and this association could be described as a criminal association I have taken that personal factor into account but in doing so I bear in mind that in cases of this gravity your personal circumstances are of limited effect in the choice of sentence, see Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes) 2004 NICA 42 and Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle) [2004] NICA 33.

[56] I bear in mind the distinction between genuine remorse and concern as to the position in which each of you see yourself, see R v Ryan Quinn [2006] NICA 27 and Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle) [2004] NICA 33 at [38]. I have set out earlier in this judgment my conclusions in relation to expressions of remorse

[57] I take into account as a mitigating factor your ages at the time that these offences were committed but I do so on a strictly limited basis, see Gilbert's case at paragraph [25].

[58] I will deal separately with the mitigating feature that, as I have set out at paragraphs [3], [4] and [5], you have all pleaded guilty. I have not given the full element of discount which I would accord to an earlier plea of guilty. However I do recognise that you ultimately pleaded guilty and thereby saved TR the very considerable additional trauma of having to recount her horrific experiences in a public environment. The first 3 days of the trial involved swearing the jury and legal argument. Accordingly none of you were put in charge of the jury and the case was not opened by the prosecution. TR was however available to give evidence in the court house.

[59] I also bear in mind the discounts for a plea of guilty in Gilbert's case and in the decision in Attorney General's Reference (No 12 of 2003) (Sloan) [2003] NICA 35. In both of those cases the discount for a plea of guilty at a late stage was 20%. I consider that the discount that should be given in your cases should be approaching 20%. You, Saulius Petraitis, would be entitled to a greater discount than you, Audrius Sliogeris, in view of your responses to the police but I have decided not to draw any distinction between the sentences that I impose on both of you in view of the particular degradation that you Saulius Petraitis inflicted on TR in the house.

Deterrence

[60] I consider that deterrence to others in Lithuania or other parts of Europe, as well as those in the United Kingdom whatever their origins in respect of activities such as occurred in this case is a highly material consideration in respect of all of you but in particular in respect of you Audrius Sliogeris and you Saulius Petraitis. I consider there to be a clear need for deterrence in respect of the sentence that I will impose on you Audrius Sliogeris and on you Saulius Petraitis. The deterrent element in respect of you Vitalius Petraitis is also present albeit to a lesser extent.

Sentence in respect of you Audrius Sliogeris

[61] For the first offence of rape 14 years imprisonment.

[62] For the second offence of rape 14 years imprisonment.

[63] For the offence of kidnapping TR 8 years imprisonment.

[64] For the offence of false imprisonment of TR 8 years imprisonment.

[65] All of these sentences shall be concurrent.

[66] I make an order under Article 26 of the Criminal Justice (Northern Ireland) Order 1996 that instead of being granted remission of your sentence you shall, on the day on which you might have been discharged if the remission had been granted, be released on licence.

[67] I recommend your deportation in accordance with section 3(6) of the Immigration Act 1971.

Sentence in respect of you Saulius Petraitis

[68] For the first offence of rape 14 years imprisonment.

[69] For the second offence of rape 14 years imprisonment.

[70] For the offence of kidnapping TR 8 years imprisonment.

[71] For the offence of false imprisonment of TR 8 years imprisonment.

[72] All of these sentences shall be concurrent.

[73] I make an order under Article 26 of the Criminal Justice (Northern Ireland) Order 1996 that instead of being granted remission of your sentence you shall, on the day on which you might have been discharged if the remission had been granted, be released on licence.

[74] I recommend your deportation in accordance with section 3(6) of the Immigration Act 1971.

Sentence in respect of you Vitalijus Petraitis

[75] For the offence of rape 8 years imprisonment.

[76] I make an order under Article 26 of the Criminal Justice (Northern Ireland) Order 1996 that instead of being granted remission of your sentence you shall, on the day on which you might have been discharged if the remission had been granted, be released on licence.

[77] I recommend your deportation in accordance with section 3(6) of the Immigration Act 1971.