



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 30
HCA/2019/5/XM

Lord Justice Clerk
Lord Malcolm
Lord Turnbull

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in

APPEAL UNDER SECTION 26 OF THE EXTRADITION ACT 2003

by

ALESIA KOVALIAUSKAITE

Appellant

against

THE LORD ADVOCATE ON BEHALF OF THE LITHUANIAN AUTHORITIES

Respondent

Appellant: Mackintosh; Dunne Defence

Respondent: DJ Dickson AD (sol adv); for the Lord Advocate on behalf of the Lithuanian Authorities

3 May 2019

[1] The appellant seeks leave to appeal the decision of the sheriff at Edinburgh to order her extradition to the Republic of Lithuania in respect of a European Arrest Warrant, namely an accusation warrant relating, broadly speaking, to fraud and drug trafficking alleged to have been committed between 2011 and 2015. It is understood that if extradited the appellant would be held on remand at Lukiškės Prison. Assurances have been provided by

the Lithuanian authorities in relation to all persons surrendered to Lithuania from the United Kingdom under a European Arrest Warrant for prosecution or execution of a sentence. The Lithuanian authorities have confirmed that the terms of the assurances would apply to all cases under consideration before the Scottish courts. These assurances were that: (1) those returned under an accusation warrant would be held in one of three remand prisons, Kaunas, Lukiškės or Šiauliai, where they would be guaranteed a minimum space allocation of 3m² per person, in compliance with Article 3 of the European Convention and Human Rights; (2) those returned under conviction warrants would be held in such remand conditions for a maximum of 10 days before being held in cells, which also met the space requirements of Article 3 of the Convention; (3) all prisoners held in Lukiškės or Šiauliai would be housed only in the refurbished or renovated parts of the prison.

[2] After hearing expert evidence and considering relevant material, the sheriff concluded that there was an international consensus that remand prison conditions in Lithuania were such as to give rise to substantial grounds for believing that a requested prisoner returned to such conditions faced a real risk of being subject to inhuman or degrading treatment. The whole basis of the sheriff's decision in relation to the remand institutions was that the conditions there would not be acceptable unless sufficient assurances were otherwise given. The fundamental problems repeatedly identified were overcrowding and poor conditions of hygiene and sanitary facilities. The sheriff required to consider whether the terms of the assurances were such as to overcome the risk that the appellant would be held in such conditions.

[3] The only issue before the sheriff was thus whether the assurances given by the Lithuanian authorities were sufficient to dispel the risk of ill-treatment of the appellant, should she be extradited there and held in Lukiškės Prison.

It is generally recognised that, in these circumstances, four questions arise: (1) the terms of the assurances must indicate that on return the individual will not be held in conditions which breach Article 3; (2) the assurances must be given in good faith; (3) there must be a sound objective basis for believing that the assurances will be fulfilled; (4) fulfilment of the assurances must be capable of being verified. It is not suggested that the sheriff erred in his approach to this matter, rather the suggestion is that he did not have material which provided a sound basis for believing that the assurances would be fulfilled.

[4] We do not accept that it is arguable that in order to determine the reliability of the assurances, the sheriff would require to have the sort of detailed information suggested as to the precise details of the cell or conditions in which the appellant would be held. For example, the assurances are not merely that the appellant will be held in conditions where 3m² of space is provided: the assurances are that she will be provided with no less than 3m² space “in compliance with Article 3 of the European Convention on Human Rights”. The sheriff correctly noted that this entitled him to conclude that the minimum standard would be met. It is clear from the evidence before him that it would be possible for this standard to be met. The issues described by the expert in relation to Lukiškės, was that space was a significant issue and lack of privacy. Typical violations within the prison were overcrowding, violations of privacy and, in some cases, unhygienic conditions. If more than one prisoner were accommodated within certain cells, the space requirements of the Convention would not be met. However, it was equally clear that it was physically possible for the relevant standard to be met if fewer prisoners were contained within the one cell. The expert explained that there was within the prison a more newly renovated area, used commonly for life prisoners rather than remand. More recent inspection by the CPT suggested that the issue of overcrowding had decreased somewhat. The expert witness

specifically gave evidence that there are some cells in Lukiškės that are human rights standard compliant and that could be used to house detainees. He accepted that generally the direction of travel is that conditions in Lithuanian prisons are improving.

[5] In *Jane (No. 2)* [2018] EWHC 2691 (Admin), the court noted that Lithuania continues to make considerable efforts to improve conditions in its remand prisons. There is an ombudsman who has the right to make unannounced visits to any prison and who may demand to interview any prisoner held there. In *Jane (No. 2)*, a case concerning Lukiškės, the court considered that the assurances were such as to make clear that the requested person would not be subjected to overcrowding, which had been the main problem at Lukiškės (para 18).

[6] In our view it is not arguable that on the evidence before him, the sheriff was not entitled to reach the same conclusion. The sheriff correctly noted that the source of the assurance is important. Lithuania is a member of the European Union and the Council of Europe. The principle of mutual trust requires us to assume, unless there can be shown good reason otherwise, that assurances are given in good faith and that a member state will comply with its obligations thereunder. The expert acknowledged that Lithuania takes compliance with its obligations seriously and that where cases have been brought before domestic courts, compensation is awarded and paid. The tenuous basis upon which the expert called into question the likelihood that the Lithuanian Government would comply with the assurances was speculative and hypothetical and would not provide a basis for declining to rely on the assurances given.

[7] The application will therefore be refused.