



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2025] HCJAC 48
HCA/2025/009/XM**

Lady Wise
Lord Clark
Lord Ericht

OPINION OF THE COURT

delivered by LADY WISE

in

Appeal under section 26 of the Extradition Act 2003

by

INETA GAVENAITE (formerly DZINGUVIENE)

Appellant

against

THE LORD ADVOCATE (representing the Republic of Lithuania)

Respondent

**Appellant: McCall KC, Bryce; Dunne Defence
Respondent: McGuire; Crown Agent**

28 October 2025

Introduction and background

[1] On 29 May 2025 at Edinburgh Sheriff Court, the sheriff ordered the extradition of the appellant to Lithuania. She is subject to an outstanding sentence of 15 years' imprisonment passed by the Kaunas Regional Court, Lithuania on 30 December 2013, having been

convicted of the murder of her infant daughter Paulina, shortly after that child's birth in April 2009. Lithuania is a category 1 territory for the purposes of the Extradition Act 2003.

[2] The appellant was born in Marijampole, Lithuania in 1985. She gave birth to her first child, a daughter in 2001. In December 2003 she gave birth to another child who was adopted shortly after birth. She married in 2005 and gave birth to a daughter in November that year. The appellant's husband then moved to Ireland for work, with the appellant and the two children joining him there in July 2006. In November 2007 the appellant gave birth to a son. Following the family's return to Lithuania in 2008 the appellant became pregnant again and gave birth to a daughter, Paulina, on 3 April 2009. In February 2010 the family moved to Fraserburgh in connection with the appellant's husband's employment. On 12 April 2010 the appellant gave birth to a son, Paulius, who was discovered the following day dead and in a plastic bag inside a holdall in the common stair of the property in which the appellant lived. Two weeks later the body of Paulina, who had been suffocated shortly after her birth, was found in the attic of the appellant's previous home in Lithuania.

[3] The appellant was convicted in the High Court of Justiciary for the murder of Paulius, for which she was sentenced, on 9 June 2011, to life imprisonment with a punishment part of 15 years. Thereafter, she was extradited to Lithuania to stand trial for the murder of Paulina. In terms of an agreement reached between the relevant authorities in this country and Lithuania, the appellant was subsequently returned to Scotland to continue serving her life sentence following her conviction and an unsuccessful appeal against sentence in Lithuania. In the circumstances narrated below, the Scottish murder conviction was quashed following a reference by the Scottish Criminal Cases Review Commission ("SCCRC"). Authority was granted for a new

prosecution. In the course of the fresh prosecution, the Crown accepted a plea of guilty to culpable homicide. On 20 June 2023 the appellant received a sentence for the culpable homicide of 8½ years' imprisonment, backdated to 15 April 2010. She had already served more than that period, although steps had been taken to deport her and she remained in custody until 4 July 2023 when she was granted immigration bail. On 6 July 2023 she appeared in Edinburgh Sheriff Court in respect of the extradition warrant that is the subject of this appeal. She was remanded in custody, where she has remained since then. Should she be extradited, every day in custody from 6 July 2023 will count towards her Lithuanian sentence.

[4] The appellant seeks leave to appeal against the sheriff's order for her extradition. She contends that extradition ought to be refused on the grounds of (i) breach of her rights under Article 3 of the European Convention on Human Rights/section 25 of the 2003 Act and (ii) passage of time. At the hearing before us we heard arguments on the merits of the appeal as well as on the preliminary issue of whether leave to appeal should be granted. We received a Devolution Minute that through oversight had not been before the sheriff. The points it raises were advanced as part of the first ground of appeal.

The applicable statutory provisions

[5] In terms of section 11(1) of the Extradition Act 2003, a judge hearing an application requires to decide whether extradition is barred for any of ten specified reasons. One of those reasons is the passage of time. Section 14 then provides that:

“A person’s extradition to a category 1 territory is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have—

- (a) committed the extradition offence (where he is accused of its commission), or
- (b) become unlawfully at large (where he is alleged to have been convicted of it)”

[6] Section 25 of the 2003 Act provides:

- “(1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
- (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
- (3) The judge must—
 - (a) order the person’s discharge, or
 - (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.”

[7] Section 21 of the Act, which applies to the present case, proceeding as it does on a conviction in the requesting state, requires the judge to decide whether the person’s extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. Article 3 ECHR provides: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

[8] Section 27 sets out the court’s powers in an appeal brought under section 26. An appeal may be allowed only if certain conditions are met. In this appeal the conditions in subsection (3) are relevant. These are that:

- “(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;-
- (b) if he had decided the question in the way he ought to have done, he would have been required to order the person’s discharge.”

The sheriff court proceedings and decision

[9] The procedural history in the sheriff court is narrated in the sheriff's report. Between the appellant's first appearance on the part 1 warrant on 6 July 2023 and 29 May 2025, there were a number of delays, in part due to requests by the sheriff to the Lithuanian authorities for clarification of certain legal and procedural matters.

[10] A detailed joint minute had been entered into by the parties agreeing various facts relating to the appellant's history, her criminal history in Scotland and Lithuania, her extradition and transfer history and her mental health. In particular, the following facts relevant to the current appeal were agreed:

- The appellant has a diagnosis of Complex Post-Traumatic Stress Disorder (CPTSD), Post-Traumatic Stress Disorder (PTSD) and depressive disorder.
- The diagnosis of CPTSD was not formally available prior to 2019 and was not widely known in professional practice as at 2011-2013.
- The appellant was the victim of a rape and sexual assault in about April 2003, something of key significance for the development and diagnosis of PTSD and CPTSD.
- At the time of the killing of both Paulius (in Scotland) and Paulina (in Lithuania) the appellant was suffering from CPTSD and PTSD, which disorders had a substantial effect on her conduct.
- In January 2009, the appellant attempted suicide.

[11] Three expert witnesses were led in evidence before the sheriff, all on behalf of the appellant. The content of their evidence is narrated more fully in the sheriff's report.

Rolandas Tilindis, a Lithuanian criminal lawyer who had prosecuted for many years but is

now a defence lawyer, had prepared a report and gave evidence about aspects of Lithuanian law relevant to the appellant's situation. He expressed the view that it was likely that the time the appellant has spent in custody insofar as relative to the Scottish conviction would not be deducted from the Lithuanian sentence should she be extradited. Further, the definition of diminished responsibility within the Lithuanian Criminal Code would not be applicable "because of a lack of grounds to renew the case".

[12] Mr Tilindis' evidence about whether the appellant might be able to seek a retrial ("renewal") in Lithuania based on the fresh evidence about the disorders from which she was suffering at material times was limited and in the sheriff's view unsatisfactory. In essence, Article 444 of the Lithuanian Criminal Code lists four circumstances which may lead to the reopening/ renewal of a criminal case in that jurisdiction. The first relates to where a judgment which has the force of *res judicata* is shown to have been based on false or uncertain evidence. The fourth circumstance relates to matters not known and which could not have been known to the court at the time of conviction that might prove either innocence or the commission of a less serious offence. Mr Tilindis' oral evidence was that renewal of the appellant's case in Lithuania using this ground was not a possibility, but the sheriff records that he did not explain why this would be so.

[13] Professor Morgan, emeritus professor of criminal justice at Bristol University, gave evidence about the Lithuanian prison estate, which he had inspected during three visits in 2010, 2011 and 2014. He referred to a general intolerance of mental illness in Lithuanian society and raised a number of issues about the medical and psychiatric services available at Panevezys, the country's only female prison. He inferred that the prison did have a psychiatrist as it was not listed as one of the prisons without such personnel. His evidence

relating to the treatment the appellant would receive from other prisoners was described as speculative by the sheriff and is in any event not a point insisted on before us on appeal.

The sheriff had concerns about Professor Morgan's evidence, given the age of his information about the facilities in Lithuanian prisons.

[14] Dr Bett, a psychiatrist based in Glasgow, had seen the appellant twice and had provided a report in January 2024 which she updated on 5 November 2024. She considered that, in the event of extradition, the appellant would be at substantial risk of suicide. In that context, she referred to concerns about the provision of psychiatric and medical services in Lithuanian prisons, but the report on which she relied related to four male prisons. Dr Bett considered that the valuable psychological work, supervision and monitoring of the appellant, available to her in Scotland, would probably not be provided in Lithuania. The sheriff was critical of Dr Bett; he formed the view that she was "very much in the appellant's corner". He found that while the appellant had received treatment for depression in Scotland initially, latterly she has been well. Dr Bett had overstated the events that could trigger a suicide attempt. She had spoken of the Lithuanian court pejoratively, alleging it had been unwilling to recognise that mental disorder may have played a part in the appellant's offending. The available material showed that, on the contrary, the court in the Lithuanian proceedings had ordered and accepted the conclusions of a psychiatric and psychological evaluation. The sheriff concluded that Panevezys prison was a broadly satisfactory institution, with medical, psychiatric, psychological and nursing services available, should the appellant require them.

[15] The sheriff considered the concluded evidence of all three witnesses to be unsatisfactory. He was in a position to evaluate Dr Bett's evidence without further

enquiry. However, he was particularly concerned about Mr Tilindis' inability to explain why an application could not be made under Article 444 of the Lithuanian Criminal Code in this case, given that its provisions appeared to relate to fresh evidence. He regarded the witness's bare *ipse dixit* as insufficient for a conclusion on whether the appellant's case could be reopened in light of the new evidence about her having suffered CPTSD and PTSD at the material times. He decided to seek information on that and on associated sentencing issues, together with up to date information about the conditions in Panevezys prison, from the Lithuanian judicial authorities and in particular from Judge Remeika, who had granted the part 1 warrant.

[16] In his report, the sheriff narrates the pertinent questions he then asked and passages from the answers given. He was keen to understand the relationship between diminished capacity (defined in Article 18 of the Lithuanian Code) as a potential mitigating circumstance. He asked specifically whether the case could be reopened in terms of Article 444 on the basis that circumstances which were not and could not have been known to the court at the time of the trial proved that the appellant had committed a less serious offence than the one for which she was sentenced. The response from Judge Remeika on that point was:

"Article 444(1⁴) of the CPC can be applied and the criminal case reopened [and] the criminal case may be renewed if it is confirmed that the mental state of the person **at the time of the commission of the offence** [Judge Remeika's emphasis] was different from that established at the time of the trial and that that new condition may affect the easier classification of the act committed under the criminal code."

The sheriff concluded that, while the responses were not entirely free of ambiguity, there was sufficient information to indicate that the case could competently be reopened in terms of Article 444.

[17] Judge Remeika had also confirmed that Panevezys prison employs medical professionals, including psychologists. If there was a significant deterioration in the appellant's mental health, she would receive prescribed treatment from a medic in the prison, and if her condition worsened, and there was a doubt about her capacity, she would receive a forensic psychiatric examination and if appropriate might be ordered by the court to receive treatment in a specialised hospital.

[18] On the basis of such evidence as he accepted and the additional available material, the sheriff concluded that neither Article 3 ECHR nor section 25 of the 2003 Act was “realistically engaged”.

[19] In addressing the passage of time argument, the sheriff referred to the familiar authorities on section 14 of the 2003 Act and the meaning of “unjust or oppressive” in that context; *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 779, *La Torre v Italy* [2007] EWHC 1370 (Admin) (per Laws LJ at para [37]) and *Gomes v Government of Trinidad & Tobago* [2009] 1 WLR 1038. He rejected the appellant’s argument that the passage of time in this case should be calculated from the date of her conviction in Lithuania and the imposition of the 15 year sentence there. Such an argument was not supported by any of the authorities, albeit that in accusation cases the starting point was the date of the alleged commission of the crime. In any event, there had been no delay on the part of the Lithuanian authorities, far less culpable delay. The unusual circumstances of this case included the appellant’s murder conviction in Scotland, her extradition to Lithuania for trial for a separate murder, her return to prison in Scotland following the Lithuanian conviction and then the quashing of the Scottish conviction and the subsequent acceptance by the Crown of the culpable homicide plea. It was not

until the last of those events and the news of the appellant's imminent release that led to the second Lithuanian warrant. The appellant was probably not unlawfully at large until it was granted on 26 April 2023.

[20] A definitive view on the interpretation of the relevant starting point was unnecessary, however, as even looking at the whole period, there was no delay of the type that would render extradition unjust or oppressive. While it would been possible, technically, for the Lithuanian authorities to make the second application for extradition immediately following the appellant's return to Scotland in 2014, that would not have been appropriate, given that she was at that time going to remain in custody here for another 11 years. The quashing of the Scottish conviction and anticipated release of the appellant following the plea to the lesser charge in 2023 had led to the change in approach.

[21] Separately, the appellant argued that she would not gain credit for the excess time in custody she had served as a result of the new backdated Scottish sentence. As the 8½ year sentence ultimately imposed for culpable homicide had expired on 14 October 2018, there was a period of 4 years, 8 months and 23 days between that expiry and her remand on the present warrant. That would not count towards her 15 year Lithuanian sentence. The sheriff concluded that the years spent in custody between 2018 and 2023 related peculiarly to the Scottish case and arose in consequence of the appellant's delayed disclosure of the facts that led to the quashing of the murder conviction. There was the possibility of a reduced sentence in Lithuania following a successful Article 444 application to establish diminished responsibility for killing

Paulina. The appellant had failed to establish any of her grounds of challenge and extradition was ordered.

Submissions for the appellant

[22] The sheriff had erred in refusing the appellant's challenges under section 21 (relating to Article 3 ECHR on mental health and suicide risk) and section 25 (unjust and oppressive to extradite as a result of her mental condition). It was accepted that there was a presumption that appropriate medical facilities would be available in the relevant country when considering section 25 and Article 3. However, the sheriff had made no relevant findings in fact in relation to the evidence of risk of suicide and lack of appropriate psychiatric facilities. It was not in dispute that the appellant was currently well and in remission, but on the evidence of Dr Bett her current wellbeing was probably situation specific. The issue was whether extradition would cause her to relapse and if so, whether appropriate treatment was available. If it was not, that could rebut the presumption. There was no finding that the appellant had failed to establish the risk of relapse following extradition. All that the sheriff found was that there were services available in the women's prison in that jurisdiction. The response from Lithuania was generic and had not addressed psychiatric treatment for specific disorders such as CPTSD. Dr Bett's evidence had been that the appellant presented a high or very high risk of suicide. The sheriff ought to have concluded that the necessary treatment for that was not available in Panevezys prison.

[23] While matters of credibility and reliability were for the sheriff, he had not been entitled to reject Dr Bett's evidence wholesale. She had based her opinion partly on the

previous psychiatric evidence which had been accepted for the purpose of quashing the murder conviction in Scotland and was unassailable. The sheriff had been trying to resolve the difficulty posed by the Lithuanian authorities having chosen not to lead any evidence in the case, although no challenge was now being taken with the process of contacting the judicial authorities in that state. He had failed to address the issue of whether the risk of the appellant succeeding in committing suicide was sufficiently great to result in a finding of oppression absent appropriate arrangements in Lithuania to cope with her particular mental condition.

[24] The fact of a suicide attempt in 2009 had been agreed and the sheriff appeared to have dismissed its significance. He had ignored Dr Bett's evidence that a prior unsuccessful attempt at suicide increases the risk of a successful future suicide. Given the summary nature of the proceedings in the sheriff court there were no transcribed notes of evidence but Dr Bett had given evidence to that effect. There had been no evidence contradicting Dr Bett's opinion. The sheriff had material in the form of previous psychiatric reports referred to by Dr Bett and which detailed the particularly specialised treatment and its positive outcome for the appellant in Scotland.

[25] In light of the dialogue with the relevant judicial authorities on which the sheriff embarked, he must have accepted, at least *prima facie*, the potential on the evidence led for a breach of Article 3 and/or oppression under section 25. He had asked about available provision in Lithuania for prisoners presenting a high risk of suicide or who might suffer a significant downturn in their mental health. At the very least this indicated he had not made up his mind on that issue. In the absence of evidence countering Dr Bett's opinion and in light of the inadequate responses from Lithuania on

this point, the sheriff should have accepted her evidence and found that any measures that would be taken in Lithuania would not be effective in the long-term. In line with the relevant authorities; *Turner v Government of USA* [2012] EWHC 2426 (Admin) at para [2], *Magiera v Poland* [2017] EWHC 2757 (Admin) at paras [28] and [32] and *AM (Zimbabwe) v SSHD* [2021] AC 633 at paras [23] and [34], the appellant had adduced evidence capable of demonstrating that there were substantial grounds for believing that she would be exposed to a real risk of suffering contrary to Article 3 following extradition. It was then for the requesting state to dispel any serious doubts. The inadequate responses in this case had not done so and so the sheriff had erred in his conclusions.

[26] On the second ground of appeal the key question was the impact of the passage of time during the relevant period and whether it rendered extradition unfair. The sheriff had erred in reaching conclusions about Lithuanian law in relation to diminished responsibility. It had been inappropriate to use a part of the opinion of the psychiatrist in the Scottish proceedings, framed specifically in terms of the Scots law definition of diminished responsibility, to form a view as to whether the Lithuanian test would be met. There was a clear agreement in the joint minute that as a matter of fact the appellant was suffering from CPTSD and PTSD at the time of the killing of both Paulius and Paulina. That was something the sheriff was obliged to accept in the Scottish proceedings. He had erred in considering that parties were somehow trying to bind the Lithuanian courts on that matter. Further, he had failed to understand that the appellant's case was never that the psychiatrist originally instructed in Scotland had erred, rather the successful referral back to the High Court in this case had been on the

basis of fresh evidence. In suggesting otherwise to the Lithuanian authorities, the sheriff had displayed a misunderstanding of the position.

[27] Mr Tilindis' evidence was that the appellant did not meet the criteria for renewal of her case under Article 444 of the Lithuanian Criminal Code. He was asked in terms why the new evidence of her psychiatric condition would not provide a basis for such renewal. He responded that the now available material could not prove the appellant's innocence and could not result in her being convicted of a lesser offence. He had been clear also that the first of the four situations in Article 444 relating to *res judicata* did not apply in this case as there had been no false or uncertain evidence. The answers given by the Lithuanian judge to the sheriff's questions made clear that where a person is found to have diminished capacity that is reflected in sentence (as opposed to conviction for a lesser offence). That accorded with the evidence given by Mr Tilindis. The sheriff had failed to have regard to that explanation.

[28] The focus on the possibility of renewal under Article 444 had not formed part of the sheriff's original decision albeit that it was given some emphasis in the appeal report. It was necessarily grounded in the sheriff's comments that it was suggested the original psychiatrist had erred, something that was no part of the case for either party. The significant disclosures made in 2021 had not been available to psychiatrists either in Lithuania or in Scotland and so they could have not made the diagnosis of CPTSD.

[29] Further, it would in any event be oppressive to extradite the appellant to serve the remainder of the 15 year sentence in circumstances where the Lithuanian authorities would not take account of the 4 years, 8 months and 23 days which the appellant had spent in custody in terms of the original Scottish sentence but which post-dated the

expiry of the later sentence for culpable homicide. The consequence was that the appellant would be liable to serve in excess of 28 years in prison, in circumstances where the sentences imposed running consecutively amounted to 23 years and 6 months. In considering that absence of blame on the part of the Lithuanian authorities was the determinative factor, the sheriff had erred. The question was whether events occurring during the relevant period rendered extradition unfair regardless of the reasons for the passage of time.

[30] It was not an answer to this challenge that the additional time was simply an inevitability of the separate processes in Scotland and Lithuania. While the Lithuanian authorities would not be precluded from taking the 4 years and 8 months into account, the information received was to the effect that they would not do so. Although the appellant had killed her newborn child in Lithuania and criminal liability attached to that, the key question was whether it was oppressive for her to spend additional years in prison over and above appropriate punishment for that. Taking the whole circumstances into account, that would be unfair. It would be artificial to separate the Scots law consequences from those pertaining under Lithuanian law. The matter should be approached as one of overall fairness. The appellant should not now be required to serve another 15 year sentence under deduction only of the period she has been on remand under the part 1 warrant.

[31] Were the court to come to the view even provisionally that it would uphold the challenge on this ground, it would be possible to seek an assurance from Lithuania that, following extradition, it would take the 4 years and 8 months into account. Whether or not such an assurance was provided could inform the outcome of the proceedings. In

light of the broader approach now being taken, it was probably unnecessary to reach a definitive view on the starting point for the relevant period under section 14.

Submissions for the respondent

[32] The sheriff's report disclosed no error in law or in fact and the court should refuse leave to appeal, which failing, to grant leave and refuse the appeal in its entirety. On ground one the sheriff had (at paragraph 79) made an important finding about the treatment that would be available in Panevezys prison should the appellant so require it. He was entitled to reject Dr Bett's evidence to the contrary effect. While he had been critical of that witness's lack of impartiality, he had been entitled to reject her evidence as failing to provide an adequate basis to engage Article 3 ECHR or section 25 of the 2003 Act. The presumption articulated in *Agius v Court of Magistrates Malta* [2011] EWHC 759 (Admin) was the starting point. It is not easily displaced and is only capable of being rebutted by "clear and cogent evidence" establishing that extradition would be incompatible with the appellant's Convention rights. It was abundantly clear that the sheriff found that there had been no such clear and cogent evidence. It was in that context that the tenor of cross-examination of Dr Bett had been about the level of any potential suicide risk following extradition. The key point was that while there had been a suicide attempt back in 2009 and an indication by the appellant that she had suicidal thoughts in the past, the evidence did not come close to the type of substantial risk that the authorities suggested was required before extradition might be regarded as unjust or oppressive (*Turner v Government of USA*).

[33] The onus had been squarely on the appellant to establish by strong evidence what it was by way of medical/psychiatric facilities that Panevezys prison was unable to provide and she had failed to do so. The sheriff could have rejected this ground of challenge without further enquiries, but following judicial dialogue he had further material to weigh in his decision-making. He had relied on the answers from the Lithuanian judicial authorities and treated them fairly and reasonably.

[34] On passage of time and delay, the sheriff had been correct to conclude that there had been no culpable delay on the part of the Lithuanian authorities. While it was clear in terms of section 14 that the appellant was not unlawfully at large until 2023, it had been appropriate for the whole background circumstances to be considered before reaching a conclusion on this basis. The argument about the 4 years and 8 month period accordingly had to be considered. It was wrong to criticise the sheriff for commenting on the lack of fault on the part of the Lithuanian authorities. This was ultimately a neutral finding, but the sheriff had been correct to consider it as part of his decision-making process as the outcome could have been different had the Lithuanian authorities been at fault. The sheriff had considered carefully the chronology of events that had led to the delay in seeking the second extradition warrant. While it had been technically open to the authorities to request extradition following the appellant's return to Scotland, equally it would have been open to the appellant to request a transfer of sentence at that time. Neither fact gave rise to any suggestion of injustice or oppression.

[35] In relation to the reopening of the Lithuanian conviction, the sheriff made a finding in fact that the appellant could competently make such an application in terms of Article 444 of the Lithuanian Criminal Code. This was an important finding given

that the overall notion of unjust or oppressive requires the court to consider whether a fair trial is impossible having regard to all of the safeguards existing under the domestic law of the requested state (*Lagunione v Lord Advocate* [2015] HCJAC 53; 2015 SCCR 292). The reference in the authorities to the trial process covers all cases where it would be unfair to return an appellant (*Kakis v Government of Republic of Cyprus* at 783). It was sufficient for the sheriff to find that the appellant could competently submit an application under Article 444 based on the psychiatric medical evidence that was not available at the time of the original decision. The merits of such an application were clearly a matter for the Lithuanian judiciary and not this court. All that was under discussion was whether there was a mechanism whereby the appellant could have her case reviewed. This was consistent with recent authority to the effect that only in rare cases should a requested court embark on predicting the outcome of an application in the requested court (*Andrysiewicz v Poland* [2025] UKSC 23; [2025] 1 WLR 2733 at paras [25] – [29]). The sheriff had not fallen into the error of assessing prospects of success and his reference to the “easier classification” part of Judge Remeika’s response should be understood in that context.

[36] It could not properly be contended that the sheriff ought to have decided a question before him at the extradition hearing differently (2003 Act, section 27(3)(a)) or far less that a different answer to the question would have led him to be required to order the person’s discharge (section 27(3)(b)). Even if the appellant had been correct in the interpretation of Article 444 of the Lithuanian Criminal Code offered by Mr Tilindis, the sheriff would not have been obliged to order her discharge. On any view of the case the appellant had killed two newborn children and the present situation has arisen out

of those circumstances. The additional 4 years and 8 months she had spent in custody following the backdating of the fresh conviction for culpable homicide was not sufficient to render extradition to Lithuania oppressive or unfair. The extent to which there was scope in Lithuania for deducting that period from the appellant's Lithuanian sentence was unknown but, even if it was not taken into account at all, that would not be sufficient for the appellant to succeed; it was an unfortunate consequence of the timing of the appellant's disclosures in Scotland. To give the appellant the benefit of the consequences of the series of events that have occurred when she has on any view been guilty of criminality in Lithuania would be unfair.

Decision

[37] The first ground of appeal involves the sheriff's decision on the appellant's psychiatric condition and the consequences of any lack of medical facilities and treatment options in the women's prison in Lithuania. Indisputably, it was for the appellant to rebut the presumption that a country in this category will fulfil its obligations on these matters (*Agius v Court of Magistrates Malta*, at para [18]). She sought to do so through the evidence of Dr Bett and Professor Morgan. The assessment of those witnesses was pre-eminently a matter for the sheriff. In the absence of a transcript of the evidence, we must rely on the sheriff's narration of its key elements. He concluded that Dr Bett appeared partial and that her evidence did not form a sufficient basis for engaging either Article 3 or section 25. Senior counsel emphasised that Dr Bett's view was that the appellant was a substantial suicide risk, but it is clear that the sheriff rejected that evidence. He was entitled to do so and his reasons are adequate.

[38] Dr Bett had overstated the events that could trigger a suicide attempt. She had made erroneous pejorative statements about the Lithuanian courts' attitude to the appellant's psychiatric illness. The absence of contradictory expert evidence does not preclude the rejection of skilled witness testimony. It was incumbent on the sheriff to evaluate Dr Bett's evidence and decide whether it could be relied on in whole or in part. He was entitled to reject her position that, while currently mentally well, the appellant was likely to relapse if extradited. It was for the appellant to establish that there was a substantial risk of suicide (*Turner v Government of USA* at para [2]) and she had failed to lead clear, cogent and reliable evidence that would have supported a finding to that effect. We are not satisfied that there is any basis for interfering with the sheriff's conclusion that Dr Bett's evidence as a whole was unreliable.

[39] Professor Morgan's evidence was out of date and the sheriff took care to inform himself of the availability of medical, including psychiatric, services in the relevant prison. There was no reliable evidence to support a concern that the Lithuanian authorities would not meet their obligations in this respect. To the contrary, the available information was to the effect that the appellant would be able to access a full range of medical and psychiatric services if required. Reliance was placed on the particularly specialised treatment the appellant has received in this jurisdiction, albeit that she does not currently require to access that. The sheriff was not faced with having to make the more detailed enquiries that might otherwise have been required (*Magiera v Poland* at paras [34] and [35]). It would be for medical professionals in Lithuania to assess the nature and level of treatment that would be administered in the event of a relapse subsequent to extradition.

[40] It is clear from his report that, absent the additional information from Lithuania, the sheriff would have ordered extradition on the basis that the evidence led on behalf of the appellant was so unsatisfactory and unreliable that the presumption was not rebutted. He cannot properly be criticised for undertaking additional enquiries to see whether the deficiencies in the evidence could be explained or overcome. We reject the suggestion that he must have reached a tentative conclusion favourable to the appellant before doing so; his report clearly indicates otherwise. Insofar as relevant to this appeal, Professor Morgan's evidence had not highlighted an absence of adequate medical, including psychiatric, services at Panevezys prison. The additional information obtained provided a positive assurance that the full range of such services would be available. Had the sheriff required to rely only on the evidence led, it would not have been sufficient to displace the presumption that medical issues would be dealt with appropriately in the requesting state, applying the principle of mutual trust-*W v Spanish Authority* [2020] EWHC 2278 (Admin) at para [64]. We agree with his conclusion that the available material did not meet the high threshold required for the engagement of Article 3 ECHR or section 25 of the 2003 Act such that the appellant's mental condition would render it unjust or oppressive to extradite her. Accordingly, the first ground of appeal fails.

[41] The second ground of appeal involves consideration of two separate strands. Before turning to these we record that we have found it unnecessary to reach any concluded view on the issue of the correct period for calculation of the passage of time for the application of section 14 of the 2003 Act. In the unusual circumstances of this case, a strict application of section 14(b) of the Act would result in the relevant period

commencing only in 2023. However, parties agreed that it would be artificial to ignore the whole history of the case and that a broad approach should be taken in analysing all relevant events in addressing the question of whether it would be unjust or oppressive now to extradite the appellant. This is not a case in which blame for the delay can be attributed to the requesting state, the Lithuanian authorities having acted appropriately in delaying the second extradition request until the time at which the appellant's release was anticipated. The sheriff cannot be criticised for considering whether any part of the delay was the fault of the Lithuanian authorities, as that would have been a relevant factor. In the absence of any such fault, the issue becomes whether the whole circumstances would now give rise to injustice or oppression if the appellant is extradited.

[42] The first of the two strands primarily relates to whether the appellant might be able to invoke provisions of the Lithuanian Criminal Code relating to fresh evidence. On behalf of the appellant, it was not accepted that Mr Tilindis had given no reason for his statement that the appellant did not meet the criteria for a renewal of the case on that basis. His evidence was that the psychiatric evidence now available could not prove her innocence and could not result in her being convicted of a lesser offence. With respect to Mr Tilindis, we can understand why the sheriff considered that such a statement fell well short of an explanation and thought it necessary to seek clarification from Lithuanian judicial authorities. The response (quoted at para [16] above) indicates that a renewal of the case may be available. While the translation difficulties led to a discussion about "easier classification" the tenor of the response is clear enough. It is

sufficient for present purposes that there is a recognised route under Lithuanian criminal law and procedure for further appeals of this nature.

[43] It was necessary to assess the new information from Judge Remeika and make sense of it against a backdrop of the evidence led. We reject the contention that the sheriff sought to interpret Lithuanian domestic law on diminished responsibility. He acknowledged that there could be doubt about whether the appellant's mental disorders would satisfy the requirements of diminished responsibility in terms of Article 18 of the Lithuanian Criminal Code. Any such doubt did not militate against making an order, however, as the assessment of an application to re-open the case in Lithuania would always be a matter for that jurisdiction. It will almost invariably be inappropriate to assess the prospects of any future application in the requesting state (*Andrysiewicz v Poland*). The sheriff was bound to accept the agreement that the appellant had been suffering from CPTSD and PTSD at the time of both killings only for the purposes of the Scottish hearing. That he expressed doubt, incorrectly in our view, about the appropriateness of the joint minute, was ultimately immaterial to the substance of his decision.

[44] The second strand relates to the appellant being extradited having served over 4 years and 8 months in custody beyond the ultimate sentence imposed for culpable homicide. If that would not be taken into account against the sentence imposed in Lithuania, would it render extradition oppressive? Senior counsel for the appellant acknowledged that there was nothing to preclude this period being taken into account, just that the available information suggested that the Lithuanian authorities would not do so. While the additional time served flows from the quashing of the Scottish

conviction and the substitution many years later of a lesser conviction and lower sentence, we accept that it is at least a relevant consideration in determining these proceedings. It would be unfortunate if the appellant serves several more years in custody than she would have done on the consecutive imposition of the sentences for culpable homicide and murder respectively. On the other hand, allowing the appeal and quashing the order would have the alternative unfortunate consequence of relieving the appellant from the punishment imposed by the requesting state for what was on any view an extremely serious criminal act. In considering overall fairness we must have regard to both possible outcomes.

[45] We are not persuaded that that the sheriff should have decided differently the question of whether the additional time served in Scotland would render it oppressive to extradite the appellant. The relevant series of events includes the timing of the appellant's disclosures in August 2021, when she had already served 10 years of the original life sentence punishment part of 15 years. No criticism can properly be levelled at the appellant for that, but neither can the Lithuanian authorities be expected to commit to resolving its consequences. Again, it will be for the appellant to make such applications to the relevant authorities about this matter as are considered appropriate. In the circumstances we do not require to seek an assurance from the Lithuanian authorities that some account would be taken of the additional years served by the appellant here. That issue can also be safely left to them.

[46] There were additional points made in relation to the sheriff's decision, including that his report to this court does not fully coincide with the judgment he gave at the conclusion of the proceedings. Having seen both documents, we detect nothing

substantial in the changes made. The sheriff in this case appears to have taken particular care to ensure that he understood the arguments against extradition and secured additional information to that end before reaching a final decision.

[47] For the reasons given, although we shall grant leave to appeal in respect of both grounds, the appeal and associated Devolution Minute are refused.