JUDICIARY OF
ENGLAND AND WALES

In the Westminster Magistrates' Court

BETWEEN :

Klaipeda Circuit Court, Lithuania

Requesting Judicial Authority

v

Egidijus Žuolys

Requested Person

The warrant before the court is a conviction warrant issued by the Klaipeda Circuit Court on 31 July 2015 and certified by the National Crime Agency on 11 August 2015. The return of the requested person, Egidijus Žuolys, is sought to serve a cumulative sentence of twelve years imprisonment of which one year, four months and eighteen days remains to be served.

The final hearing came before me on Tuesday 2 October 2018. The judicial authority was represented by Ms Rebecca Hill and the requested person by Mr Graeme Hall. The requested person appeared in court in custody assisted by a Lithuanian interpreter.

The issues raised on behalf of the requested person were sections 2 and 10 (two of the three offences described in the warrant are not extradition offences), section 17 (specialty; there is no provision in Lithuanian law to disaggregate the sentence if extradition is ordered on only one of the three offences referred to in the warrant) and Article 3 (Lithuanian prison conditions).

I heard briefly from the requested person who adopted the contents of his proof of evidence but was not cross-examined. I also heard from Karolis Liutkevičius a Lithuanian lawyer called as an expert on behalf of the requested person. He adopted the contents of his report dated 24 May 2018; he was cross-examined and briefly re-examined.

<u>The Offences</u>

The first two offences are described in box e) as follows, *"In November 1998 (the exact date was not established), in Paluobės vill, Skuodas dstr., at his place of residence at the address Paluobės villl, Skuodas dstr., Egidijus Žuolys produced a machine for making moonshine and at the same place, on 19.11.1998, he produced and stored a large amount, i.e. 145 litres of moonshine."*

In paragraphs 9 and 10 of her Revised Opening Note dated 1 October 2018 Ms Hill accepts that the warrant fails to adequately particularise the first offence and is unable to establish dual criminality in respect of the second offence. She formally concedes that the requested person should be discharged in respect of both offences under section 10(3) of the 2003 Act.

In the light of the clear wording of those paragraphs I give no further consideration to the wording and intent of either sections 2 or 10 and formally discharge the requested person in respect of those offences.

The third offence is described as follows, *"On 26.11.2003, at about 8:00 pm, in the room of the apartment owned by Antanas Šakinis located at the address Algirdo st. 25A, Skuodas, Egidijus Žuolys, being under the influence of alcohol, during a conflict with his cohabitant Genovaitė Paulauskienė over her use of alcohol with other persons, he deliberately kicked once Genovaitė Paulauskienė, who was*

standing, on the right side with a booted leg, in this manner causing her to fall down to the floor. He kicked G. Paulauskienė, who was lying on the floor, at least four times with his booted leg on the head, chest, abdomen and side, causing the victim a head contusion, serous bruises in the chest and abdomen, haemorrhages in the left temporalis muscle and soft tissues, subcutaneous haemorrhages in the head and soft tissues of the chest, rupture of the bladder and the spill of the urine in the peritoneal cavity. The injuries complicated into diffuse purulent peritonitis, cerebral and pulmonary oedema, progressive poly-organic failure. Because of the injuries, G. Paulauskienė died in Klaipėda City Hospital on 09.12.2003, i.e. the convict killed Genovaitė Paulauskienė deliberately."

The Framework List has been ticked for *"murder, grievous bodily injury".*

Section 17 (Specialty)

Section 17 provides as follows:

(1) A person's extradition to a category 1 territory is barred by reason of specialty if (and only if) there are no speciality arrangements with the category 1 territory.

(2) There are specialty arrangements with a category 1 territory if, under the law of that territory or arrangements made between it and the United Kingdom, a person who is extradited to the territory from the United Kingdom may be dealt with in the territory for an offence committed before his extradition, only if –

(a) The offence is falling with subsection (3)...

(3) The offences are –

(a) The offence in respect of which the person was extradited....

Those representing the requested person have obtained a report dated 22 June 2018 from Rolandas Tilindis, a Lithuanian lawyer practicing in Vilnius, Lithuania. In relation to the issue of disaggregation and re-sentencing (paragraph 8) he writes, *"There are no laws and procedures in Lithuania allowing disaggregation and re-sentencing where a requested person's extradition is sought to serve "combined" or "cumulative" sentence for two or more offences. It should be noted that all judgments on the guilt of Mr Zuolys are final and not a subject for any appeal."*

The Revised Opening Note states (paragraph 12 and following paragraphs), *"The United Kingdom has specialty arrangements with Lithuania by virtue of article 27(2) of the extradition Framework Decision (Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States) which provides that, subject to stated exceptions, "a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered."*

If a Requested Person is to advance an argument pursuant to s11 and s17 of the Act the burden is on them to show on the balance of probabilities that specialty arrangements are not in place (Kucera v District Court of Karvina, Czech Republic [2009] 1 WLR 806 para 59)

Applying the Extradition (Multiple Offences) Order 2003 (SI 2003/3150) the Divisional Court determined in Trepac v Slovak Republic [2006] EWHC 3346 (Admin) and Brodziak v Poland [2013] EWHC 3394 (Admin) that the discharge of an RP in respect of some offences does not necessitate the discharge of the warrant as a whole, even where the sentence in respect of all matters has been aggregated.

In Brodziak the Appellant's extradition had been sought to serve a single sentence of 1 year 6 months' imprisonment in respect of three offences, however all parties agreed that one of those offences was not an extradition offence. The defence argued two grounds of appeal relevant to this case, namely (1) the District Judge erred in finding that there were effective specialty arrangements in place between the UK and Poland; (2) he erred in finding that the warrant was valid within the meaning of section 2(6)(e) of the 2003 Act.

The Court noted:
46. There is, moreover, a strong presumption that other Member States will act in accordance with their international obligations in respect of specialty.....

The defence relied upon an expert opinion by a Polish lawyer who testified as follows, "Merged penalty issued on the base of art 85 PCC cannot be dissolved unless the judgment is quashed in <u>extraordinary</u> **(my underlining)** *proceedings which is not a case in these proceedings.....*

The Court ultimately held there was insufficient evidence to displace the strong presumption that the Polish authorities would act in accordance with their international obligations in respect of specialty and that the Appellant has failed to prove the absence of effective specialty arrangements. They reached this view on the specific factual matrix of the case and their observation that:

57. .....there is no evidence before us of even a single case in which an extradited person has been required in practice to serve a sentence relating in whole or in part to an offence for which he was not extradited. Yet there has been a large number of extraditions to Poland from the United Kingdom (and there has no doubt been many others from other Member States) for the purpose of serving a sentence following conviction; and it must have been relatively common, as the present appeal suggests, for such cases to involve a single sentence imposed for multiple offences that include non-extradition offences. If this had given rise to a real problem in practice as regards breach of specialty, we would expect evidence of specific cases to be available. We do not think that an adverse inference as to the absence of effective specialty protection should be drawn on the basis of the limited material of a general nature that has been placed before us."

The issue of specialty was identified early in the proceedings and the Crown Prosecution Service sent the following very clear questions to the judicial authority,

1. *Is the defence expert correct that there is no law or procedure in Lithuania allowing disaggregation and re-sentencing when a person's extradition is sought to serve a combined or cumulative sentence?*
2. *Could you please confirm how you will observe the specialty principle if Mr Zuolys is extradited in respect of the murder matter only and is not extradited in respect of the moonshine offences?*
3. *Could you please provide an assurance that Mr Zuolys will not be required to serve any period of imprisonment in respect of any offence where the UK court has refused to order extradition?*

In a letter of further information sent by the Regional Court of Klaipėda both dated and forwarded on the day of the hearing the Court states, *"We have to note that the Criminal Code of the Republic of Lithuania does not provide for a possibility to split the combined sentences and to execute sentences imposed by separate judgments, because in this case the final judgment of the Regional Court of*

Klaipėda of 11 October 2004 and a final combined penalty, imposed by this judgment, must be executed. E. Žuolys has served a part of the sentence according to this judgment, the rest not served part of the penalty is – 1 (one) year 4 (four) months and 18 (eighteen) days. We have to note that there is no possibility to distinguish for which offences E. Žuolys has served his sentence, because laws of the Republic of Lithuania does not provide for a possibility to split combined sentences, the last judgment is executed, by which the penalties are combined for all the criminal offences. In case of surrender of E. Žuolys to the Republic of Lithuania the judgment of the Regional Court of Klaipėda of 11 October 2004 will be executed by which a penalty of imprisonment for 12 (twelve) years was imposed on E. Žuolys, and a part of it, which was not served – 1 (one) year 4 (four) months 18 (eighteen) days will be executed."

In the light of that uncompromising statement which arrived during the course of the hearing, Ms Hill asked for time to taken instructions. When she returned to court she confirmed that the letter of further information had not changed her stance and that she continued to rely on *Brodziak***.**

Her submission was that the overriding mutual trust is such that we can have confidence that the Lithuanian authorities will carry out the requisite disaggregation exercise. The Lithuanian state's obligation in respect of specialty is one we can expect the judicial authority to enforce. She argued that Lithuania is a party that can be expected to be fully aware of its specialty obligations. The lack of any reference to an exceptional remedy as in Brodziak does not mean that there is not one available. She suggested that, if the court is considering discharging the requested person on the basis of specialty, it may consider making a more formal enquiry of the judicial authority.

I concluded that no further adjournment is appropriate in this case. The specialty issue was identified at an early stage in the proceedings and the Crown Prosecution Service has had considerable time to clarify the matter. Clear questions were put to the relevant court and the unequivocal response received over the lunchtime adjournment on the day of the hearing leaves no room for doubt as to the position which will be adopted by the Klaipėda Circuit Court if the requested person is extradited.

I agreed with Mr Hall in his *"Further Submissions of the Requested Person"* **dated 5 October 2018 that the fact that Lithuania is a party to the Framework Decision does not provide support for the proposition that Lithuania has adequate specialty protection. As to the absence of evidence of previous cases in which Lithuania's specialty obligations had not been observed he writes,** *"There was no evidence of specialty breaches in Edutanu yet lack of specialty protection was found in Romania, and... There was evidence of breaches in Kortas yet the Divisional Court found adequate specialty protection in Poland."*

On the evidence before me I have concluded on the balance of probabilities that the outstanding sentence the requested person is required to serve cannot be disaggregated to exclude the first two offences. I have further concluded, despite the findings in *Brodziak*, **that the evidence is sufficiently compelling to displace the strong presumption that the Lithuanian authorities will act in accordance with their international obligations in respect of specialty in this case and that there are no effective specialty arrangements in place.**

Accordingly, I discharge the requested person under section 17 of the 2003 Act.

<u>Article 3</u>

In his written report Mr Liutkevičius concluded (paragraph 57), *"...it is my expert opinion that if Mr Žuolys were surrendered to Lithuania under the European Arrest Warrant and held in Lukiškės Remand Prison or transferred to Alytus Correction House, there is a real chance of him facing conditions that are in violation of both national laws and international human rights standards."*

In cross examination he stated,

1. **He visited Lukiškės prison this year while conducting a supervisory visit with the Ombudsman. The other meeting was with a prisoner serving life imprisonment. He has never visited Alytus Correction House in any formal capacity. His evidence is**

founded on a collation of the open source material – the CPT reports, press reports and the Ombudsman's reports

2. **The most up to date evidence is the 2018 CPT report, the 2017 Ombudsman's report and the Alytus Strategic Activity Plan dated 23 January 2018. There are also a number of Lithuanian Administrative Court decisions published in 2017 and 2018 but those decisions paint more historic portraits and it takes time for cases to come up for hearing**
3. **The number of persons in detention in Lithuania has been decreasing**
4. **He cannot confirm or deny how much the Lithuanian government has spent on improving prisons. He has no reason to believe that the information about monies spent in improving Alytus referred to in the Strategic Activity Plan is not accurate. He did not consider that there have been any significant steps taken to improve prison conditions. He thought that monies spent have been used to improve the plaster work and decorative state of cells and to install new plumbing. No new penitentiaries have been built since 2003 but there is a new remand prison which does not suffer from the problems of most remand prisons**
5. **He is not aware of evidence that the previous assurance provided by the Lithuanian authorities in respect of Kaunas prison was ever breached. He is aware of the fresh assurance provided in respect of Lukiškės and Alytus. He doubts whether the assurance can be practically implemented. He doubted whether the assurance would be met in practice and considered that there is no effective monitoring procedure in place because prisoners are moved around a lot. He is not able to identify any specific cases which cast doubt on the most recent assurance**
6. **He gave evidence to the Divisional Court in the case of *Jane*. The evidence he gave was similar to the evidence he has given in this case. He has not focused overmuch on correction houses as he had no way of knowing where the requested person would serve his sentence if he is extradited. It is his view that inter-prisoner violence is the most significant issue. He limited himself to the possible risks of overcrowding without going into detail**

7. **In re-examination he said that he was unable to say whether there is any mechanism to alert a prison to the fact that a specific prisoner benefits from an assurance. There is nothing in the assurance provided in this case which explains how the assurance will be monitored.**

Those representing the requested person have provided a considerable amount of written material and both counsel have made very detailed and helpful written submissions on this issue. I mean them no discourtesy by not summarising either the written material or their detailed submissions.

The Lithuanian Ministry of Justice has provided a written assurance dated 7 August 2018 in the following terms,

"....1. All persons surrendered under an accusation warrant from the United Kingdom will be held in Kaunas Remand Prison, Lukiskes Remand Prison-Closed Prison or Siaulai Remand Prison, whereby they will be guaranteed a minimum space allocation of no less than 3 square metres per person in compliance with Article 3 of the European Convention on Human Rights.

2. All persons surrendered under a conviction warrant that may spend a maximum of 10 days at one of the remand centers set out in clause 1, will be subject to the same guarantees and will be housed in cells with a minimum space allocation of no less than 3 square metres per person in compliance with Article 3 of the European Convention on Human Rights.

3. All persons held in Lukiskes Remand Prison-Closed prison or Siauliau Remand Prison as per clause 1 and 2 above, will only be held in the refurbished or renovated parts of the prisons and in compliance with Article 3 of the European Convention on Human Rights."

I have also had the benefit of reading the judgment of my colleague District Judge Jabbitt dated 17 September 2018 in the case of *Lithuania v Bartulis and others.*

Whilst his judgment is not binding on me, Judge Jabbitt concluded:

1. **There is an international consensus that prison conditions in some remand prisons in Lithuania, and certainly in Lukiškės, would lead**

to a real risk of a detained individual suffering inhuman or degrading treatment and would thus infringe article 3 of the ECHR

2. **On the basis of the Divisional Court's findings in *Jane* made on the basis of much of the evidence before me and the evidence of Mr Liutkevičius,** *"It is inevitable that if convicted, Mr Jane will be imprisoned in a conviction prison, which could be Alytus, Kybarati, Marijampole, Pravienniskes or indeed Lukiskes, however the Divisional Court made no adverse findings in respect of those institutions.....I am unable to conclude that this evidence, together with the evidence presented to the Divisional Court, amounts to clear, cogent and compelling evidence or powerful evidence, plainly not amounting to something like an international consensus of the type envisaged by the Divisional Court in Brazuks and others v Prosecutor General's Office, Latvia [2014] EWHC 1021 (Admin) to rebut the presumption that Lithuania possesses as a Member of the Council of Europe. Thus I do not find the requested persons have adduced sufficient evidence to rebut the presumption of compliance retained by Lithuania, in respect of conviction prisons. That is not to say that I did not find the evidence base put forward by the defence to be strong and persuasive and the detailed and careful submissions equally persuasive, but I consider this court to be bound by the decision in Jane, in relation to conviction prisons, and the evidence of the prisoners in Alytus and Pravienniskes, current and former, was insufficient in terms of the Brazuks criteria to rebut the presumption of compliance in favour of the JA"*

I agreed with Ms Hill that the evidence suggests:

1. **There has been a slight reduction overall in the Lithuanian prison population**
2. **There was no overcrowding in Alytus at the time of the CPT report**
3. **Violence shown to prisoners by prison officers made for unpleasant reading. What is described in the latest CPT report (page 24) appear to be extraordinary and inexcusable incidents of violence perpetrated on prisoners but there is no suggestion that that behavior is commonplace or has been repeated**
4. **The Strategic Activity Plan published this year confirms that material improvements have been made to Alytus**
5. **The Lithuanian judicial decisions included with the material are largely historic**

6. **The "caste" subculture, whilst very concerning, appears to be declining in significance (see page 3 of the study of Rūta Vačiūnienė – tab 17 of the court bundle)**

In the light of the recent judgment in *Jane v Lithuania [2018] EWHC 1122 (Admin)* **and the judgment of District Judge Jabbitt whose Article 3 findings I agree and adopt, I have concluded that the weighty presumption that Lithuania will comply with its Article 3 obligations has not been rebutted.**

I have further concluded that the written assurance provided by the Lithuanian Ministry of Justice is in an acceptable form insofar as it deals only with the cell space that will be afforded to the requested person if he is extradited.

Accordingly, I reject the Article 3 issue.

For the reasons set out above I discharge Mr Žuolys solely on the basis of the section 17 specialty argument.

12 October 2018
Kenneth Grant District Judge (Magistrates' Courts)