



Neutral Citation Number: [2020] EWHC 2042 (Admin)

Case No: CO/3328/2019 & CO/4036/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2020

Before:

LADY JUSTICE NICOLA DAVIES DBE
MR JUSTICE JULIAN KNOWLES

Between:

MARTIN DANFELDS	<u>First Applicant</u>
&	
ENDIJS JODELIS	<u>Second Applicant</u>
- and -	
GENERAL PROSECUTOR'S OFFICE, LATVIA	<u>Respondent</u>

Mary Westcott (instructed by **Lawrence & Co.**) for the **First Applicant**
Saoirse Townshend (instructed by **Oracle Solicitors**) for the **Second Applicant**
Jonathan Swain (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 22 July 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be at 9.45am on Tuesday 28 July 2020.

Lady Justice Nicola Davies:

1. Martin Danfolds (“the first applicant”) and Endijs Jodelis (“the second applicant”) renew their applications for permission to appeal pursuant to section 26 of the Extradition Act 2003 (“the 2003 Act”) and CPR 50.22. On 20 August 2019 and 16 October 2019 respectively, District Judge Zani at the Westminster Magistrates’ Court ordered the applicants’ extradition to Latvia following a joint contested extradition hearing on 19 July 2019. The applicants rely upon the same grounds of appeal, namely that the district judge was wrong in his conclusions on the following bars to extradition and should have ordered the applicants’ discharge because:
 - i) there is a real risk that the applicants will be subject to inhuman and degrading treatment if extradited to Latvia due to the established poor state of Latvian prisons (sections 21 and 21A of the 2003 Act; article 3 ECHR);
 - ii) extradition is a disproportionate interference with the applicants’ right to a private and family life (sections 21 and 21A of the 2003 Act; article 8 ECHR).
2. Permission to appeal was refused by Sir Wyn Williams sitting as a High Court Judge on 24 January 2020. He directed that were renewed applications to be made, they should be made before a Divisional Court and heard jointly. The first applicant has been in custody since his arrest pursuant to a conviction European Arrest Warrant (“EAW”) on 12 April 2019. The second applicant was in custody but following a discharge of the first EAW in February 2020 he has been on bail with stringent conditions.

The EAWs

The first applicant

3. The first applicant’s extradition is sought pursuant to a conviction EAW issued on 7 November 2017 resulting from two offences. The first offence, a street robbery, committed on 4 January 2014, involved the theft of personal items amounting to €139.40. As to the second matter, on 23 February 2014 the first applicant, with others, broke into seven premises and stole property valued in the order of €3,000. At the same time and place he stole items from premises amounting to €1,112. On 23 July 2014 an aggregated sentence of 2 years and 6 months’ imprisonment suspended for four years was passed. On 21 December 2016 the suspended sentence was activated. As at the date of this hearing (22 July 2020), by reason of the time spent by the applicant on remand in Latvia and in custody in the UK, some nine months and eight to eleven days of the custodial term remain to be served.
4. The first applicant has lived and worked in the UK since 10 October 2014. He has no cautions or convictions in this jurisdiction. It is accepted that he is a fugitive. He was aware of the suspended sentence and failed to comply with the obligations imposed.
5. On the first applicant’s behalf it is contended that extradition holds a specific and well-founded fear for him due to a serious attack upon him by other inmates while in pre-trial detention for the extradition offences at Liepaja Prison in April 2014 which left him physically and mentally scarred and with a speech impediment. Before the court is a report from a clinical psychologist which identifies symptoms of trauma

suffered by the first applicant. Medical records from the prison indicate that the first applicant is receiving medication to assist with sleep. It is the applicant's contention that difficulties in sleeping are linked to the April 2014 attack and its psychological sequelae.

The second applicant

6. The second applicant entered the UK in November 2015. His extradition was sought pursuant to two EAWs. The first was discharged on 28 February 2020 as the second applicant had served the entirety of the sentence imposed in Latvia when in custody on remand in the UK.
7. EAW 2 was issued on 20 April 2018 and certified by the NCA on 21 May 2019. It sought the second applicant's extradition in order to prosecute him for three offences, allegedly committed on 21 September 2015, namely:
 - i) the theft of cigarettes, Coca-Cola and chocolate from a kiosk, value €28.77;
 - ii) criminal damage to the kiosk, value €55.36;
 - iii) the theft of cigarettes from a kiosk, value €88.
8. In addition to the joint article 3 submissions, the second applicant relies upon fear of reprisals in a Latvian prison from a criminal gang to whom he owes money. As to article 8, he identifies the relationship which he now enjoys with his British female partner of four years.

The extradition hearing at Westminster Magistrates' Court

Article 3 ECHR

9. Before the district judge was a report to the Latvian Government resulting from a visit to Latvia carried out by the European Committee of the Council of Europe for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT"). The visit took place in April 2016. The report was published in June 2017, together with the written response of the Latvian Government. The CPT delegation visit included prisons at Daugavgriva, Jelgava and Riga Central Prison. The CPT noted that in line with its long-standing recommendation the minimum standard of living space per prisoner in multi-occupancy cells had been raised to 4m². It stated that the country's overall prison population had further decreased as compared to its previous visit in 2013. The population was approximately 4,400 which was stated to be very high in comparison with that of most other Council of Europe Member States.
10. No allegations of recent physical ill-treatment of inmates by staff in any of the prison establishments visited were received, however the delegation's findings at the three prisons indicate that inter-prisoner violence remains a problem. It states that "as in the past, this state of affairs appeared to be the result of a combination of factors, including an insufficient staff presence in prisoner accommodation areas, the existence of informal prisoner hierarchies and the lack of purposeful activities for most inmates. The CPT recommended that the Latvian authorities "vigorously pursue their efforts to combat the phenomenon of inter-prisoner violence" in their prisons, it

also called upon the authorities to review staffing levels at the three prisons with a view to increasing the number of custodial staff present in the detention areas.

11. The CPT report identified that material conditions of detention were generally good at the Daugavpils section of Daugavgriva Prison but in contrast most of the prisoner accommodation areas in the Griva section of that prison were in “an advanced state of dilapidation (for example, crumbling walls, badly worn and sometimes even rotten floors, decrepit furniture, etc) and severely affected by humidity due to the absence of a ventilation system. Further, many cells had very limited access to natural light and the in-cell sanitary facilities in a large number of cells were in an appalling state of hygiene.” At [48] of the CPT report it is stated that “at the end of the visit, the delegation made it clear to the Latvian authorities that, in its view, the above-described conditions of detention in the Griva section of Daugavgriva Prison could be considered to be inhuman and degrading and called upon the authorities to carry out a comprehensive review of those conditions as a matter of priority.”
12. The CPT was concerned to note that at all three prisons some inmates were locked up for up to 23 hours a day with very limited out of cell activities on offer. The CPT called upon the Latvian authorities to devise and implement a comprehensive regime of out of cell activities for all prisoners, to increase the number of custodial staff present in the detention areas at the three prisons and to significantly increase the visit entitlement of prisoners serving a sentence in closed prisons.
13. The CPT declared itself “seriously concerned by the very low staffing levels” in the three prisons. In one of the living units at the Griva section of Daugavgriva Prison, one prison officer was responsible for supervising some 130 inmates from 5pm until the following morning. At Jelgava Prison there was no permanent staff present within the units for prisoners on the medium and high regime levels after 5pm. The CPT report stated that with such low staffing levels it is scarcely possible to effectively tackle the problem of inter-prisoner violence. It recommended that the Latvian authorities vigorously pursue their efforts to combat the phenomenon of inter-prisoner violence at the prisons and in other prison establishments in Latvia.
14. At the time of the visit it was contemplated that a new prison would be constructed in Liepaja. The CPT asked to be kept informed of further developments in terms of reduction of prison population and sought receipt of a timetable of construction of the new prison and information as to its general layout. The CPT expressly indicated its support for the plan to close down the Griva section of the prison.
15. In its response the Latvian Government stated that “it is planned to undertake long-term prison infrastructure reform in Latvia, building new prisons and simultaneously closing old prisons”. A new prison at Liepaja would be “multifunctional” and have double occupancy cells which will be organisationally divided in units. All “international requirements for punishment ... will be implemented”.
16. The Latvian Government stated that although no major reconstruction could be undertaken in the Griva section, given the building’s status as a historic monument, a programme of rolling refurbishment would be undertaken in the establishment from 2017 to 2020. It identified the rebuilding of a punishment cell and the installation of closet toilets (the absence of which had been noted in the CPT report) as having been

completed. The CPT's attention was drawn to the fact that the authorities were planning to close down the Griva section in the long-term.

17. In his judgment in respect of the first applicant, the district judge noted that complaints about prison conditions in Latvia had been considered in detail in *Brazuks v Latvia* [2014] EWHC 1021 (Admin) and that "the Divisional Court emphatically rejected any general argument in respect of the Latvian prison estate". As to the more recent CPT report, he described the report as mixed, recording that it acknowledged a difficulty caused by inter-prisoner violence. The district judge stated that the findings/recommendations in such a report are not determinative of the article 3 issue. No analysis of the content of the CPT report was contained in the judgment.
18. In his judgment in respect of the second applicant, the district judge referred to the CPT report and noted that it was critical of the conditions prevailing in the Griva section of Daugavgriva Prison and that concerns were expressed about inter-prisoner violence and very low staffing levels at the three prisons. The district judge referred to the authority of *R v Konusenko* (Crown Court in Northern Ireland, January 2019) and to the fact that the Recorder of Belfast discharged a requested person from extradition proceedings brought by the Latvian authorities having considered the contents of the same CPT report and Latvia's response. Of the Northern Irish authority, the district judge stated that he had taken note of it but it was not binding on the court. As to the CPT report he stated that it was not determinative of the article 3 issue.

The submissions of the applicants and the respondent

19. It is the applicants' case that the district judge failed to engage with the content of the CPT report and other key material submitted by the applicants which included:
 - i) legal proceedings in Northern Ireland – *R v Konusenko* (January 2019) – in which the Recorder of Belfast, having considered the CPT report and the response of Latvia to specific questions raised by the court arising from its content, found that surrender of the appellant would be in breach of his article 3 rights and discharged the EAW;
 - ii) a public statement by the Latvian Minister for Justice on 12 April 2019, which confirmed that a new prison had not been built and that during 2018 compensation totalling €8,000 was paid to prison inmates resulting from unacceptable living conditions;
 - iii) Amnesty International reports published in 2018 which reiterated the point that prison conditions continue to be poor, the justice system is overburdened, prisons continue to suffer from overcrowding and other alleged abuses;
 - iv) what are said to be fact-specific ECtHR decisions which are said to corroborate international concerns on the same issues involving violence, hygiene, dilapidated facilities, low staff numbers and poor regime.
20. Further, the applicants contend that the district judge failed to refer to and address the authority of *Criminal Proceedings Aranyosi and Caldaru* [2016] QB 921. The essence of the applicants' case is that the evidence before the district judge, taken

together, ought to have passed the threshold set out in *Aranyosi*. At [89] of *Aranyosi* the court stated that in determining whether there is evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, the executing judicial authority must initially rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State. That information may be obtained from a number of sources which include judgments of international courts, judgments of courts of the issuing Member State and decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN.

21. At [92] the court stated that when such a risk is identified it is necessary for the executing judicial authority to make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to the risk of inhuman and degrading treatment because of the conditions of his detention envisaged in the issuing Member State.
22. It is the applicants' contention that the findings in a report from a respected and objective body of the conditions in three prisons should have triggered the district judge to make enquiries as to which prison the applicant would be accommodated in and whether the conditions at the prison still exist.
23. It is the respondent's case that the district judge, although not specifically identifying the *Aranyosi* stages, did address his mind to the relevant issues. The response of the Latvian authorities to the CPT report demonstrates that steps were being taken to improve identified problems in the prisons. The respondent contends that on the evidence before the court, the district judge was entitled to reach the decision which he did. Mr Swain, on behalf of the respondent, accepted that construction of the new Latvian prison has not commenced, the earliest date presently identified is 2021.

Fresh evidence

24. The applicants applied to adduce evidence which was not available at the time of the hearing in the Magistrates' Court. The court received fresh evidence *de bene esse*, it included:
 - i) extracts from pages on the Baltic News Network website which indicate that there has been slippage in the date for construction of the new prison;
 - ii) the Latvian Ombudsman Office in its report for the year 2019 stated that it continued to receive complaints about the living conditions in institutions of deprivation of liberty in Latvia, especially in Daugavgriva Prison. The Ombudsman report also identifies the fact that informal hierarchies and inter-prisoner violence remained a problem in 2019;
 - iii) the Latvian Ombudsman Office in its 2020 report on the previous year confirmed that it continued to receive a greater number of complaints about the living conditions in prisons, particularly Daugavgriva;
 - iv) Ms Spure, Head of the Department of Detention Places, is reported as stating in February 2019 that Daugavgrivsky Prison is "simply unsafe", 12 to 16 prisoners sit in one cell. She is reported as stating that in order "To support the

outdated infrastructure of prisons, more and more budgetary funds are needed, so construction of a new prison cannot be postponed”. Ms Spure acknowledged that prison numbers had dropped but is reported as stating that “the appropriate conditions of detention cannot be ensured for everyone.” She is reported as having anticipated that the building of a new prison would result in the closing of at least three old places of detention.

Discussion and conclusion

Article 3 ECHR

25. The CPT report constitutes objective, reliable and specific evidence. It sets out in clear terms the critical state of prison conditions in the Griva section of Daugavgriva Prison in 2016. In Griva and other prisons, poor infrastructure, lack of staff, inter-prisoner violence and lack of activities were identified in the CPT report as areas of serious concern. Unchallenged is the fact that the building of the new prison has stalled and/or been postponed.
26. I accept the contention of the applicants that the issues raised in the CPT report are directly relevant to the issue of whether a real risk exists of inhuman or degrading treatment in respect of each applicant if detained in prison in Latvia. The CPT visit took place in 2016, an update upon prison conditions is required by the court in order to assess whether either applicant will be exposed to such a risk. I have concluded that the appropriate course is to request Latvia to provide assurances and information as to conditions in those prisons. Further, given the challenging situation created by the Covid-19 pandemic the court will also request identification of the measures taken by the Latvian authorities to address the pandemic in prisons. The assurances sought and questions asked are to be sent to the General Prosecutor’s Office of the Issuing Authority as a Further Information Request. They are set out in the Annex to this judgment.
27. I accept the applicants’ contentions that it is reasonably arguable that the district judge:
 - i) failed to grapple with or analyse the content of the CPT report;
 - ii) failed to address the content of the key material identified in [19] above;
 - iii) by reason of (i) and (ii), he failed to follow the guidance set out in *Aranyosi*.

Accordingly, I grant permission to appeal to each applicant upon the article 3 ECHR ground. The response from Latvia to the matters set out in the Annex will be considered by the court at the hearing of these appeals upon the article 3 issue. As to the fresh evidence sought to be relied upon by the applicants, it will be a matter for the court hearing these appeals as to whether such evidence meets the *Fenyvesi* test.

Article 8 ECHR

The first applicant

28. On behalf of the first applicant it is contended that errors were made by the district judge in carrying out the article 8 balancing exercise. A factor in favour of granting

extradition was identified by the district judge as being an outstanding sentence of two years and six months. This was an error. As of 22 July 2020 the outstanding time to be served is nine months and eight to eleven days.

29. In finding that extradition would not be a disproportionate interference with the article 8 rights of the first applicant, the district judge accepted that there would be hardship caused to him and potentially to his young son who he described as living in Latvia. Implicit in that assertion was the fact that the applicant's son and his mother would be in the same country as the applicant following his extradition. This is another error. The first applicant's son and his mother live in Romania.
30. By the date of the hearing of this appeal the first applicant will have spent a further period in custody. The remaining period left to be served is a factor of which account will be taken by the court in considering proportionality in the context of the article 8 balancing exercise. Given this fact, together with the errors of the district judge, I grant permission to appeal to the first applicant on the ground of a breach of the first applicant's rights pursuant to article 8 ECHR.

The second applicant

31. When the district judge considered the article 8 rights of the second applicant, he did so in the context of two EAWs. One has now been discharged. The second relates to offences, all of which took place on the same day, in respect of a number of kiosks where cigarettes, chocolate and Coca-Cola were stolen. I do not seek to minimise the seriousness of these offences but in the scale of criminal offending they cannot properly be described as grave. Given the significant change in the circumstances of the second applicant, who has a partner in the UK to whom he provides support, there are grounds to grant permission to appeal on the article 8 issue.

Mr Justice Julian Knowles:

32. I agree.

Annex

1. The court, giving consideration to the risks of breaches of article 3 ECHR said to arise from the material presently before the court, but having as yet made no findings as to those risks, requests further evidence, assurances and/or guarantees directed to ensuring that neither Martin Danfelds (the first appellant) nor Endijs Jodelis (the second appellant), if extradited, will be detained following arrival and/or be held in pre-trial remand in custody and/or serve a sentence of imprisonment post-conviction in conditions which would breach his rights pursuant to article 3 ECHR.
2. The court seeks:
 - a) identification of the prison at which each appellant will be detained upon arrival and/or be held in pre-trial custody and/or serve his sentence of imprisonment if extradited;
 - b) an assurance that neither appellant will be transferred to the Griva section of Daugavgriva Prison;
 - c) details of the current numbers of prisoners detained in the relevant section of each prison;
 - d) details of the staffing levels at the relevant section of each prison to which each appellant, if extradited, would be detained;
 - e) an assurance that the conditions at the relevant section of each prison in terms of:
 - i) prisoner numbers;
 - ii) staffing levels;
 - iii) inter-prisoner violence;
 - iv) out of cell activities;would not breach the rights of either appellant pursuant to article 3 ECHR;
 - f) an assurance of, and details of, the monitoring which will take place to ensure compliance with the appellants' article 3 rights as set out in (e) above;
 - g) evidence of the measures being taken in the relevant section of each prison by the appropriate authority to prevent the spread of Covid-19.