Neutral Citation Number: [2020] EWHC 3543 (Admin)

Case No: CO/4736/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th December2020

Before :

MR JUSTICE FORDHAM

- -

Between :
ALIUS SPERAUSKAS

Appellant

- and -
PUBLIC PROSECUTORS OFICE OF LITHUANIA **Respondent**

- -
- -

Martin Henley (instructed by Lloyds PR Solicitors) for the **Appellant**
Adam Payter (instructed by the Crown Prosecution Service) for the **Respondent**

Hearing date: 9th December 2020

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is an extradition appeal in which three grounds of appeal are raised and reliance is placed on fresh evidence. The Respondent's position is that the appeal should fail once the evidence is considered and the legal position evaluated. So far as the fresh evidence is concerned, since it needs permission of this Court, it is open to the Court to consider the material, deal with the substance of the matters raised and then decide at that point whether the evidence has proved 'decisive' and thus grant or refuse permission to rely on it. In my judgment the better course, at least in this case, is to say at the outset that I grant permission for reliance on all of the fresh evidence that has been put forward me, all of which I have considered. That includes material that was put before me last week on the papers, and is properly in my judgment before the Court for this hearing, relating to an adjournment request which I refused on the papers but which does include evidence from the Appellant's solicitor as to what was observed in recent remote conferences with the Appellant. Permission to appeal was granted by Cutts J on 18 June 2020 on all three grounds of appeal. Extradition was ordered as long ago as 10 October 2017 by Deputy Senior District Judge Ikram (the District Judge) following a hearing.

2. I say immediately that one of the points raised orally by Mr Henley today, concerning the Appellant's need for medication and treatment for psoriatic arthritis had been dealt with on the evidence as before the District Judge. Further Information given by the Respondent in 2016 and 2017 had specifically confirmed that the necessary drugs will be available in Lithuania and at public expense. I can put that matter to one side. The appeal though raises, and rests upon, evidence that necessarily was not before the District Judge in making his order in October 2017. The main reason why this case has taken so long to come through to a substantive appeal hearing is because Article 3 ECHR prison conditions points were raised which led to various adjournments and ultimately a stay pending resolution of a test case.

3. So far as the extradition is concerned the European Arrest Warrant (EAW) dated 20 September 2016 and certified on 24 April 2017 and on which the Appellant was arrested on 19 May 2017 is an accusation warrant. It relates to offences of alleged deliberate and fraudulent company mismanagement, including the transfer of assets to family-controlled companies, culminating in insolvency and depriving creditors. Mr Henley today has rightly accepted that those are, on their face, serious matters and involved reasonably significant sums of money. As I will come on to explain, all three grounds advanced before me are ultimately grounds which concern the Appellant's health condition, and whether extradition or discharge is the appropriate outcome in the light of that and the evidence about it, put alongside the other features of the case.

Mode of hearing

4. The mode of hearing was a Microsoft Teams remote hearing. Both Counsel were satisfied, as am I, that that mode of hearing involves no prejudice to the interests of their clients. The open justice principle in my judgment has been secured. The case and its start time were listed in the cause list which was amended to give an email contact address for any member of the press or public who wish to observe this hearing. By having a remote hearing, we eliminated any risk to any individual whether associated

with the parties or a member of the press or public from having to travel to a court room or be present in one.

The grounds of appeal

5. The grounds of appeal that are advanced, and which Mr Henley rightly accepts substantially overlap, in the present case are as follows: (1) section 25 of the Extradition Act 2003 (whether the physical or mental condition of the Appellant is such that it would be unjust or oppressive to extradite him); (2) section 21A(1)(a) of the 2003 Act by reference to Article 3 (whether extradition would be incompatible with the Appellant's Article 3 ECHR rights on the basis of substantial grounds for considering that, if extradited, he will suffer treatment crossing the article 3 threshold or that there is a real risk that he will suffer such treatment); (3) section 21A(1)(a) by reference to Article 8 (whether extradition would be incompatible with the Appellant's or his family members' Article 8 rights to respect for private and family life).

Law

6. Mr Henley accepts that section 25 is a "high threshold". It was not necessary at the hearing and is not necessary in this judgment to trawl the lines of authority in relation to it or the other grounds of appeal: they are well-trodden paths. So far as Article 3 ECHR is concerned the parties made submissions on AM (Zimbabwe) [2020] UKSC 17 [2020] 2 WLR 1152. In that case, Lord Wilson's judgment at paragraph 31 identified in the Article 3 and health context the relevant threshold by reference to whether the individual being removed (that was in immigration rather than an extradition case) would, by reason of their medical condition and any response or lack of response to it, be exposed to a "serious rapid and irreversible decline in the state of [their] health resulting in intense suffering" or a "significant" (meaning "substantial") "reduction in life expectancy". Lord Wilson at paragraph 23 also dealt with the "procedural requirements" and the position where concerns are raised and when the focus then turns to the position in the receiving state (in an immigration case) or requesting state (in an extradition case).

7. Mr Henley in his skeleton argument helpfully set out the key passages in the judgment of Julian Knowles J in Magiera [2017] EWHC 2757 (Admin) which sets out 3 stages at paragraph 32. It does so in discussing whether extradition would violate Article 8 by reason of medical condition and in parallel whether extradition is barred by section 25 for the same reason. In my judgment, it is clear that Article 3 can also be interwoven into the same 3-staged approach. Indeed, that would chime with the passage from AM (Zimbabwe) at paragraph 23, to which I have just referred. (1) First, "there must be an intense focus on what [the] medical condition is and what it means for [the Appellant] in terms of his daily living, so that a proper assessment can be made of what effect upon him and his condition extradition and incarceration would have". That is stage one. Then, (2): "Once that exercise has been carried out the court must assess the extent to which any adverse effects or hardship can be met by the requesting state providing medical care or other arrangements". That is stage two. Then, (3): "Once that has been done, … the court must finally make the assessment required by Article 8 and section 25 [to which I add Article 3]…". That is stage three.

8. The judgment in Magiera in paragraphs 33 to 35 goes on to explain in more detail how the court should approach its task. It emphasises in particular that concerns about health

or impact may be raised that call for a response from the respondent authority, at which point the Court will be asking whether the "response … meets the concerns in respect of [the] specified individual" but having adopted the "starting point… that in the case of an EU member state there is a rebuttable presumption that there will be medical facilities available of the type to be expected in a prison". The judgment goes on to say "in some cases it may be necessary for the requesting state to provide specific details of what concrete steps will be taken to address the specific issues arising from the [individual's] illness to ensure that he does not suffer severe hardship or oppression by reason of his incarceration resultant on extradition. In such a case, broad generalised assertions to the effect that the prison has a clinic, or that prisoners are entitled to healthcare, or that (unspecified) medicines are available, may not be enough". At paragraph 36 the judgment goes on to make a point about the individual's "medical records" being made available to the authorities of the requesting state. I will return at the end of this judgment to the question of documents and their availability on any extradition.

The heart of the appeal

9. The issue at that is at the heart of this appeal, in my judgment, emerges clearly from Mr Henley's skeleton argument. He rightly accepts on the authority of Bartulis [2019] EWHC 3504 (Admin): "the presumption that Lithuania will comply with its general duty under Article 3 has not been rebutted". That concession in my judgment is well made and it is also important to remember that the Court in Bartulis recorded at paragraph 149(iv) that "Lithuania is presumed to provide adequate healthcare". That is the starting point for the arguments in this appeal. Later in the skeleton argument Mr Henley submits as follows: "it is contended that this case is an exceptional case, the reports of Dr Fishman and Ms Downing, absent detailed assurances to answer all the concerns expressed, must strongly engage with [the] principles… in the case of Magiera. Any further information from the Respondent is awaited but as matters stand without detailed assurances the court must discharge the Appellant". Mr Henley has other points but, in my judgment, that really is the point which stands at the heart of this appeal so far as all of the grounds of appeal ultimately are concerned. This is a case in which it is said that specific concerns are been expressed in an updated report of Dr Fishman dated 3 July 2020 and in the occupational therapy report of Ms Downing dated 10 July 2020. In my judgment, Mr Henley was right in that submission in his skeleton argument to identify the question of whether or not specific "concerns" which have been "expressed" have been adequately "answered" by the Respondent in order to evaluate the position under all three grounds of appeal.

Evidence from Dr Fishman

10. Dr Fishman is a consultant physician and rheumatologist who has been treating the Appellant for many years and whose reports and letters go back to at least 2 February 2016. Dr Fishman's latest updating report of 3 July 2020 identifies the Appellant's "underlying medical problems namely: psoriatic arthritis; having had a dense right hemiplegic stroke following a left parietal haemorrhage; and having persistent abnormal liver function blood tests". Mr Henley emphasises, in the context of Covid-19, that psoriasis is an autoimmune condition. And that is the context in which on 27 March 2020 the Appellant received a letter from Dr Fishman relating to the Covid-19 pandemic. That letter informed the Appellant that the NHS had identified him "as someone at risk of severe illness if you catch Coronavirus". The latest update from Dr

Fishman, stating that he makes clear he is "not an expert in infectious diseases" nor is he providing "expert opinion on the relative risks of Covid infection", is as follows:

> "[The Appellant] would be considered to be at high risk of developing severe complications if he were to catch Covid infection and hence has been advised to shield as per the government's guidance.
>
> He will remain at high risk of developing complications from Covid infection at all times as his medical condition will not change. The risks of contracting Covid infection will change according to the population frequency of the infection and thus his likelihood of contracting the condition.
>
> I do not feel specifically able to give expert advice on the risks of international travel or being held in prison or what measures could be in place to allow [the Appellant] to travel safely or remain in custody. From a practical point of view, maintaining the same level of shielding and strict social distancing as he has currently undertaken would appear to be a pragmatic response… Although the government has recently relaxed the advice on shielding, the decision to increase social interaction remains at the individual's discretion. As stated above, the risk of developing severe complications following Covid infection will not change, just the risk of getting the infection itself".

I will return to the concerns relating to Covid-19 and the Appellant's conditions and the impact on him of extradition.

Evidence from Dr Yogarajah

11. Other evidence relating to the Appellant includes a report of a consultant neurologist, Dr Yogarajah, dated 22 February 2018. That report records that the Appellant had suffered a stroke (which, on the papers before me, was in December 2017). It expressed the opinion "on the balance of probabilities that … he has some clinical features in keeping with a stroke affecting his left parietal lobe [and] in addition … some features in keeping with a functional neurological disorder". The report goes on: "The presence of psoriatic arthritis, especially if untreated, carries an increased risk of future strokes in comparison to persons without a diagnosis of psoriatic arthritis". That report describes the Appellant as having "several symptoms that have resulted from his stroke and functional disorder", which included "some mild to moderate weakness of his right arm/hand and leg, reduced sensation on the right side of his body and some visual field impairment". It described the Appellant as "us[ing] a crutch to walk out indoors" and expressed that "he has some functional overlay symptoms which manifest at times with severe weakness of his right arm and leg such that he can barely move them". It went on to state that he was "able to manage the basic activities of daily living independently including bathing, dressing, toileting, maintaining continence, grooming, feeding, transferring and mobility". That report recommended a formal assessment by an occupational therapist.

Evidence from Ms Downing

12. Having successfully invited the Court to extend the representation order to allow for this, there was in due course commissioned the occupational therapy report of Ms Downing dated 10 July 2020. As Mr Henley accepted in his submissions, the 'most

critical part' of that report – which report I have read as a whole – concerns '12 specific stated needs' which Ms Downing lists that the Appellant "in my opinion … would need" were he "detained in custody if he returned to Lithuania" by extradition, given his "physical disabilities". I will return to those '12 identified needs'.

13. Ms Downing, who conducted her observation remotely, also described the "communication and cognitive" position in the following way: "[the Appellant] was cooperative and made 'eye contact' with the phone camera but did not vocalise or speak at all throughout the interview. [His wife] said that there is something wrong with his speech and he cannot speak, only nod. She believes that he does understand but cannot speak. He relied on his wife for all communication". Ms Downing added that, given "the language barrier", she was not in a position to "determine … issues" as to "orientation in time or memory for events". She went on later to record the fact that she was told that the Appellant was having difficulty "operating little buttons on a mobile phone or remote control" and now had a "large Smart Phone" that he was "learning to type with [using] one hand on the touch screen".

About this evidence

14. Mr Payter for the Respondent submitted that the Court should recognise the "limitations" of the evidence being put forward as to the Appellant's condition. He characterised the evidence as "mainly third-hand" and submitted that the Appellant's condition may not be so serious as was being portrayed at the time of the occupational therapy assessment in July 2020, nor as is currently being suggested. He emphasised that the occupational therapist Ms Downing was not qualified to assess 'diagnostic or treatment' matters and was focusing on the Appellant's 'presentation and needs'. He emphasised that there was no update from the neurologist. In my judgment two points are of significance.

    i) The first point is that Mr Payter is right to submit that, were there to be extradition in this case, there would be a proper function of the authorities in Lithuania to assess for themselves, once the Appellant was in their care and control, his position and his needs. That is a point that Mr Payter specifically emphasised in the context of the '12 identified needs' and the Respondent's response to them. I will have more to say about that later in this judgment.

    ii) The second point is this. In my judgment, there is no basis for this Court to do other than accept at face value, on the material that is before the Court, that the Appellant's condition and needs are those that have been presented and described. The medical documents speak for themselves. The consultant neurologist Dr Yogarajah gave the view expressed in the report of February 2018 and properly prompted the occupational therapy report which in due course has followed from Ms Downing. The observations of Dr Fishman, including as to his own recognised limitations, are appropriately made. I accept Mr Henley's submission that there is no basis to 'impugn' what is said in the reports that are before the court.

15. I therefore proceed on the basis that the concerns identified are real, as are the needs associated with them, though I do accept that ultimately it would be appropriate for the Lithuanian authorities to look and evaluate for themselves following any extradition, provided that they have well in mind what has been said and documented about the

Appellant and what they themselves have said in the further information they have provided in these extradition proceedings. I shall return to that topic at the end of this judgment.

The concerns relating to Covid-19

16. I deal now with the question of Covid-19 and the Appellant's conditions and vulnerability and needs. The position relating to Covid-19 was addressed by the Respondent in Further Information dated 13 August 2020. That information explains that: "There have been no cases of Covid 19 in the Lithuanian prison estate yet" as at that date. It explains that measures have been introduced for example restrictions on prison visits, and testing of staff members. The letter explains that "new pre-trial detainees … have to stay in quarantine for 14 days and are being monitored" and that "all persons have access to sanitisers and disinfectants".

17. Mr Henley's submissions relating to Covid really related to two topics in particular. First, he submits that the relevant thresholds for the various grounds of appeal are crossed by reference to the implications for the Appellant from the risk of contracting Covid-19 while in the hands of the Lithuanian authorities in custody. In my judgment that concern is expressly and properly addressed in the Further Information. That, put together with the presumption accepted rightly by Mr Henley and recorded in Bartulis as applicable to responses to medical conditions, is sufficient in my judgment to answer the specific concerns that have been raised regarding Covid and the Appellant being in the hands of the prison system in Lithuania. (I mention here that reference was also made to the judgment in Gerulskis [2020] EWHC 1645 (Admin).)

18. The second feature relating to Covid-19, strongly emphasised by Mr Henley concerns travel and transfer. Mr Henley submitted that "what is missing" from the Further Information is details to deal with transfer from the Appellant's home to the UK airport at which he would be handed over to the Lithuanian authorities, and as to the arrangements that would then apply to the Appellant in transit until such time as he would be within the 14-day quarantine within the Lithuanian system described in the Further Information. Mr Henley accepted that no 'specific concern' had been raised by or on behalf of the Appellant relating specifically to 'transfer' but contended that this was a matter with which the Respondent 'needed to deal'. He pointed to his Application to Amend Grounds of Appeal (10 June 2020) which had criticised the absence of "information from the Respondent as to what measures they can or will take to ensure that the Appellant is not exposed to Covid-19" and had said it was "proper" for the Respondent to give "detailed assurances as to how it proposes to protect him from any contact with the virus". Mr Henley also emphasises, as he is entitled to, the fact that Dr Fishman's latest update (3 July 2020) did refer to "the risks of international travel" and "what measures could be in place to allow the Appellant to travel safely".

19. In my judgment, 'transfer and transit' is not a matter that fell within a need for "detailed assurances" to answer a "concern" that was being "expressed". It is quite right that both (a) the actions of the Bedfordshire police in transporting the Appellant to any handover and (b) the actions of the Lithuanian authorities in then taking on his onward transit will need to take appropriate measures to ensure appropriate shielding and social distancing. I do not accept, on the evidence, that those arrangements could not secure adequate protection. In my judgment Dr Fishman's latest update conspicuously does not suggest that international travel itself or arrangements for travel could not properly

address the concerns that arise. On the contrary, in my judgment, that letter clearly contemplates that they would be able to do so. I accept the submission of Mr Payter that, in the absence of some specific points identifying some basis on which it is suggested that the Respondent would fail to act properly, there was no need for any 'specific assurance' relating to this aspect. In my judgment, on this topic it is sufficient that the presumption is in place that appropriate steps will be taken. In my judgment, Mr Payter rightly distinguishes between the specific evidenced '12 needs' identified in evidence put forward on behalf of the Appellant by Ms Downing on the one hand and the absence of any similar material identifying any particular step which it was said was both (i) needed and (ii) there was good reason to consider would not be taken absent a specific assurance or further information.

The '12 identified needs'

20. I turn to the 12 specific needs identified in the occupational therapy report of Ms Downing. Mr Henley emphasises the picture painted by that report and the fact that the Appellant has been provided with special adaptations in a council bungalow. As I have already explained, he emphasises in particular '12 specific needs' identified in the occupational therapist's report. So far as those points are concerned the Further Information of 13 August 2020, in my judgment, addresses the position in detail. In my judgment, that letter does not constitute "broad generalised assertions to the effect that [a] prison has a clinic or that prisoners are entitled to healthcare". In my judgment, that Further Information provides the Court with "specific details" relating to "concrete steps".

21. Mr Henley criticises the Further Information for the fact that it does not contain concrete assurances that actions 'will necessarily be taken' because at times it speaks of the contingency as to an assessment being undertaken by the Lithuanian authorities. I said earlier in this judgment that I would return to this topic. I accept Mr Payter's submission that it is entirely appropriate that the Lithuanian authorities should have given what he characterises, in my judgment rightly, as 'assurances' that certain concrete steps and concrete provision 'is available and will be available for the Appellant should they be required'. Where, for example, reference is made in the Further Information to a "discuss[ion] upon an inmate's arrival" as to whether "accommodation on the ground floor" is appropriate; where, for example, reference is made to "activity [required for] mental well-being" as being organised and available "if needed": this is a recognition of steps which it is appropriate and indeed necessary that the Lithuanian authorities should themselves undertake. The question is whether, based on his presentation, condition and needs, following an extradition there are substantial grounds for considering that there is a real risk that the Appellant's needs will not be addressed such as to give rise to an impact engaging and crossing the relevant thresholds.

22. The letter describes in detail the "Social Care Unit" at the "Central Prison Hospital" which is where "highly vulnerable persons are accommodated". It then responds, in terms and in sequence, to each of the '12 specific needs' identified in the occupational therapist's report. I do not accept that there is any material deficiency or concern arising out of any of those responses. Ground floor accommodation it is clear is available and would be evaluated. Ramped wheelchair access is available. The "circulation space" specified in the OT report (indeed the maximum space there specified: the Report said "he will need at least [1500mm] and possibly 1700mm) as being needed ("1700 mm

for his wheelchair and to allow for wheelchair to bed transfers and wheelchair to toilet transfers") is expressly confirmed as available. So is the technician for wheelchair repair services; and a suitable mattress; and grab rails on the WC. So far as communal showers are concerned reference is made to the detailed description in the OT report which was very specific about access, flooring, rails and a seat. In my judgment, and viewed against the letter read as a whole and the presumption that is applicable, the response that "[t]he shower is adjusted for people with reduced mobility" is a proper and adequate one and leaves no material concern capable of crossing the relevant threshold. Frequency of showering is, again, something which is confirmed as available, subject to consultation with a doctor (which again illustrates a step which is appropriate and indeed necessary on the part of the Lithuanian authorities). The letter goes on to deal with assistance with showering and drying; nailcare for hands and feet; communication aids; and purposeful activity. Mr Henley criticised the letter for responding specifically to means of communication "such as a whiteboard and dry marker or communication cards"; but that was a point specifically included within the '12 identified needs' in the expert occupational therapist report which had evaluated communication and had identified what, in the opinion of the occupational therapist Ms Downing, was appropriate. In my judgment the crux of the matter is that the Further Information letter of 13 August 2020 did precisely what Mr Henley's skeleton argument of 31 July 2020 had said was needed: it provided an appropriate and detailed response, giving assurance or reassurance, and answering the specific concerns that had been expressed.

'Mental impairment'

23. In his submissions today Mr Henley contended that this Court needed to 'grapple' with a concern relating to 'mental impairment' and what is said to have been a 'deterioration' in the Appellant's condition so far as concerns communication and memory. Reliance is placed on a witness statement of the Appellant's solicitor dated 26 November 2020 which records, as evidence, that the Appellant had "only recently displayed fitness issues that concern his instructed solicitor and Counsel". In a Written Application for Public Funding (25 November 2020) a more detailed description had been put before the Court, including about it having taken "an hour and a half to obtain answers to a few simple questions". The submission there made was that it was "apparent that it would be impossible to conduct a trial at this pace". Mr Henley submits that there are concerns as to whether the Appellant is 'fit to stand trial' and 'fit to plead'. He submits that this Court should take that material into account in evaluating whether it is section 25 'unjust and/or oppressive to extradite the Appellant by reason of physical or mental condition'. What purpose, he asks, would it serve to seek to extradite the Appellant if he is not fit to plead or deal with a trial?

24. I have taken into account the description in the latest witness statement: I accept that the Appellant's solicitor is telling me, in evidence, that the Appellant's lawyers have observed what they consider to be a deterioration. I accept that concerns have been raised that relate to 'fitness to plead', and as to the practicalities as to standing trial. I rejected on the papers an application to adjourn this case for a further report (from a psychiatrist). I have asked myself again whether I consider there to be a need for an adjournment and further evidence.

25. In my judgment, the position is dealt with as follows. Firstly, by reference to the fact that I am quite satisfied, by reference to the concrete responses to the concerns that have

been raised, against the backcloth of the accepted and important presumption of compliance, that the Lithuanian authorities would be able to and would deal with a deterioration in the Appellant's condition, whether it has already happened or whether it were to happen following his extradition. There is, in my judgment, absolutely no basis to think or conclude that they would not. Indeed, it goes with the grain of Mr Payter's submission – which I have accepted – that there is and must be a proper role for the Lithuanian authorities to evaluate the position for themselves and to respond to the needs that the Appellant's condition presents. Secondly, and in addition to those points, I am reminded by Mr Payter by reference to Hewitt [2009] EWHC 2158 (Admin) at paragraph 28 and 37 that: the question for this Court is not to seek to assess whether an appellant is 'unfit to stand trial' but whether 'his mental condition is such that it would be unjust or oppressive to extradite'; if it is 'inevitable' that he would be found unfit, it may often be unjust or oppressive; but where there is any doubt or conflict it will be for the courts of the receiving state normally to determine the issue of unfitness. I am quite satisfied in this case that it is the proper and primary function of the Respondent requesting state authorities to assess the question of fitness to plead or fitness to stand trial, including communication and the length of time in which it takes to communicate for the purposes of a fair trial.

Conclusions

26. In my judgment, Mr Henley was right to see the medical evidence and the question of the adequacy of the Respondent's response to it and the occupational therapist's '12 identified needs' as being at the heart of all three of his grounds of appeal. In my judgment, in the light of the evidence and the Respondent's response to it, for all the reasons I have given, this appeal does not and cannot cross the threshold for section 25 (either 'injustice' or 'oppression'); nor the Article 3 threshold; nor, and by reference to the other features of the case, the article 8 disproportionality threshold. It is not necessary, as Mr Henley's structured submissions rightly recognised, to rehearse the same points through the three different 'prisms' of section 25, Article 3 and Article 8. The key and central concerns are the same; the issues plainly overlap; and, in my judgment, the conclusions are the same for each ground of appeal, essentially for the same reasons. I add this, so far as Article 8 is concerned. There is a contest between the parties on the issue of whether the Appellant is a "fugitive" in this case, in circumstances where he was holidaying in Lithuania in 2016 and was detained and interviewed and then returned to the United Kingdom in circumstances where – submits Mr Payter – he was required to surrender his identity card. The Respondent's submission, which the District Judge accepted, was that the Appellant thereby 'put himself beyond legal process'. In my judgment, even if Mr Henley were to succeed in displacing that characterisation of "fugitive", he would nevertheless be incapable of establishing that in this case, having regard to all the circumstances, the public interest considerations that weigh in favour of extradition, and the various private life and family life and health-related considerations weighing against it, that extradition is incompatible with Article 8 rights. It follows that I reject all three of the grounds of appeal and the appeal will be dismissed. That, however, is subject to a caveat, to which I now turn.

Documents to be made available, on extradition, to the relevant authorities

27. I said earlier in this judgment that I would return to the question of documents accompanying the requested person upon their extradition. I referred to the Magiera

case at paragraph 36 as describing the individual's "medical records" being made available, in conjunction with extradition, to the authorities of the requesting state. The concern in the present case that I have, and record, and which will need to be embodied satisfactorily in any Order of this Court is as follows.

28. It is important in this case, in my judgment, that upon the extradition of the Appellant, he needs to be able to have with him, and be able to ensure is transparently visible to any authorities that are dealing with him: (a) the key medical information about him that has been put before this Court and (b) in particular, the specific response which has been given by the Respondent authorities describing what they have said it is available and will be made available for the Appellant if he is recognised as needing it. I am not anticipating a vast bundle of documents, still less a vast bundle needing to be translated. But I will require the parties to liaise as to the practicalities of the mechanism for identifying the key materials (which it is possible will include this judgment), which materials identify: the concerns raised about the Appellant; his conditions and his needs; as well as the response that has been given.

29. I therefore make clear there is to be no extradition in this case until that has happened, and this Court has been able to consider that position. I have given my reasons in full for rejecting the grounds of appeal. But they rest squarely on the response that has been put forward by the Respondent. This Court does need the added assurance that nothing can go wrong so far as the keeping sight of, not losing sight of, and not failing in any communication as to those matters. I am particularly concerned that that is dealt with proactively, protectively and prospectively because of what I am told about the Appellant's own ability to communicate. What I therefore have in mind is that no Order will be made by this Court formally dismissing this appeal, until the parties have been able to liaise and provide a draft order (agreed if possible) which sets out for the Court what is to happen. It is possible that there may need to be a short addendum judgment to explain what the outcome of that mechanism was. I am therefore making no order dismissing the appeal today. I have given my reasoned judgment and I will deal on the papers with the substantive Order that is appropriate in this case, when the parties have provided the further information that the court needs. Provisionally, I will say that I would like to be able to deal with that as soon as possible and by the end of next week (18 December 2020) at the latest.

9.12.20