Neutral Citation Number: [2025] EWHC 463 (Admin)

Case No: AC-2024-LON-000342

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 February 2025

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

GYTIS JONAS DAMBRAUSKAS

Applicant

- and -

PROSECUTOR GENERAL'S OFFICE OF THE REPUBLIC OF LITHUANIA

Respondent

- -

David Ball (instructed by **Hodge Jones & Allen LLP**) for the **Applicant**
Hannah Hinton (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 23 January 2025

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Approved Judgment

This judgment was handed down remotely at 3pm on 28 February 2025
by circulation to the parties by email and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. On 26 January 2024, District Judge Tempia sitting at Westminster Magistrates' Court ordered the extradition of Gytis Jonas Dambrauskas to Lithuania pursuant to a warrant issued by the Prosecutor General's Office of the Republic of Lithuania on 9 February 2022. Mr Dambrauskas now seeks permission to appeal.

BACKGROUND

2. The warrant relates to an allegation that in July 2019 the applicant conspired with five others to defraud Lithuanian banks by obtaining loans totalling €70,800 on the basis of fraudulent information as to income. The applicant took two issues before the district judge:

2.1 First, he argued that his extradition was barred by s.12A of the Extradition Act 2003 in the absence of a prosecutorial decision.

2.2 Secondly, he argued that his extradition would not be compatible with Article 8 of the European Conventional on Human Rights & Fundamental Freedoms and that accordingly the judge was required to order his discharge pursuant to s.21A of the Act.

3. The applicant is now 27. He was originally interviewed about this case before leaving Lithuania and the police said that they would in touch. He said that he had moved to the United Kingdom in 2020 for construction work and that his wife joined him in October that year. The couple have two young children.

4. In his evidence, the applicant described the impact of extradition on his partner and children. Both parents work and share the childcare equally, but he said that there would be no one to provide financial support to his family should he be extradited. He said that he was very close to his son. He cooks for him, picks him up from school, plays games with him, and puts him to bed in the evening.

5. The applicant admitted other criminal convictions in the Netherlands & Germany. He denied leaving Lithuania to avoid prosecution and failing to return because he was worried that he would be questioned and detained. The applicant asserted that his family life was now in this country but he accepted that they had a choice about what to do if he were extradited.

6. The applicant's wife, Brigita Dambrauskieni, also gave sworn evidence. Their daughter was not at a nursery and she said that she would not be able to juggle working greater hours with childcare. She said that the impact of extradition would be significant on the children because they have a close relationship with their father and she would have no one else to assist her with their care. As well as taking their son to school and collecting him, she said that the applicant took him to clubs and after-school activities and helped with his homework in view of her own limited English. He also cares for their daughter when she is at work.

7. Ms Dambrauskieni said that if her husband were extradited, she would be unable to afford trips to Lithuania to visit him. She confirmed, however, that she had a good relationship with her family in Lithuania. She was aware of the fraud case but maintained that the reason her husband had not returned to Lithuania was because of work commitments.

8. The court also heard from a psychologist who acknowledged that the wife's brother, who lives about an hour's drive away from the family, would be a protective factor. Nevertheless, the psychologist said that the children would be impacted by the applicant's extradition and that the wife, who was suffering from moderate depression, would suffer further with her mental health.

9. District Judge Tempia found that the warrant was valid and that the offences were extradition offences within the meaning of s.10 of the Act. The judge rejected the alleged bar to extradition raised under s.12A of the Act finding that the applicant had failed to discharge the burden of proving that there were reasonable grounds for believing that the Lithuanian authorities had not made a decision to charge or try him and that his absence from Lithuania was not the sole reason for their failure to do so.

10. The judge then considered the Article 8 claim. She found that the applicant was not a fugitive in that there was no evidence that he was under any restriction when he left Lithuania and he had not

deliberately and knowingly placed himself beyond the reach of Lithuanian prosecutors. The judge concluded that the applicant and his wife had been evasive about when they came to the United Kingdom and she accepted the Home Office evidence that the applicant had entered the country in April 2021. The judge also found that the couple had not been totally honest about their support network. Indeed, the applicant had failed to mention his brother-in-law at all and had to be recalled after his wife had mentioned his presence in the United Kingdom in her own evidence.

11. The judge directed herself in accordance with Polish Judicial Authorities v. Celinski [2015] EWHC 1274 (Admin), Norris v. Government of the USA [2010] UKSC 9, and HH v. Italy [2012] UKSC 25. She accepted that the best interests of the children in this case were a primary consideration and that it was in their best interests not to be separated from their father. The judge then carried out a careful balancing exercise weighing the factors for and against extradition in order to determine whether extradition would be a proportionate interference with the applicant's Article 8 rights. Having done so, the judge concluded that it would not be disproportionate to extradite the applicant to Lithuania.

THE APPEAL

12. By his initial grounds of appeal, the applicant sought to challenge the judge's conclusion on both s.12A and Article 8. Perfected grounds were then settled abandoning the initial grounds and instead pleading a single ground, namely an Article 3 challenge on the basis of Lithuanian prison conditions. Reliance is placed on critical reports published by the Committee for the Prevention of Torture & Inhuman or Degrading Treatment ("the CPT") and, in particular, the committee's 2023 report.

13. The 2023 report was before the Magistrates' Court together with a bundle of evidence in respect of the Article 3 issue. The Divisional Court's decision in Urbonas v. Lithuania [2024] EWHC 33 (Admin) was, however, handed down on the day of the extradition hearing. On reading that decision, the applicant's then counsel abandoned the Article 3 argument. Curiously therefore this appeal seeks to abandon the grounds actually argued before the district judge and the focus of the original grounds of appeal while resurrecting a ground that was itself abandoned before the lower court.

14. While the respondent objects to the admission of fresh evidence and the reopening of the abandoned Article 3 challenge, I consider that the proper approach is to consider whether the proposed appeal is reasonably arguable and then, if necessary, to revisit such procedural issues and, in particular, the proper application of s.27(4) of the Act.

15. The relevant legal principles are well known and can be stated shortly:

    15.1 Article 3 provides that "no one shall be subjected to torture or inhuman or degrading treatment". Accordingly, Article 3 imposes an obligation on the United Kingdom not to remove a person to a country where there are substantial grounds for believing that the person would face a real risk of being subjected to ill-treatment that is contrary to the article.

    15.2 In order to meet that threshold, any ill-treatment must attain a minimum level of severity.

    15.3 Where, as here, the requesting state is also a signatory to the Convention and a member of the Council of Europe, there is a presumption that that state will comply with its obligations under Article 3.

    15.4 Such presumption may be rebutted but only by clear, cogent and compelling evidence amounting to something approaching an international consensus and identifying structural or systemic failings.

    15.5 The review of detention conditions must be based on an overall assessment of the relevant physical conditions of detention. The court should only rely upon evidence that is objective,

reliable, specific and properly updated and which demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people or which may affect certain places of detention.

15.6 Where the benefit of the presumption is lost, the requesting state must show by cogent evidence that there is no real risk of a contravention of Article 3 in the case of the particular requested person in the prisons in which he is likely to be held on remand or serve any sentence. Such evidence can comprise assurances by the requesting state.

15.7 When evaluating assurances given by friendly foreign states such as Lithuania, the court should not assume that the state will, as Lord Burnett LCJ put it in Giese v. Government of the United States of America [2018] EWHC 1480 (Admin), "do everything possible to wriggle out of them".

15.8 The test at this stage is only whether the proposed Article 3 appeal is reasonably arguable.

16. In Jane v. Lithuania (No.1) [2018] EWHC 1122 (Admin), the Divisional Court found that there was an international consensus that there was a real risk of treatment contrary to Article 3 in Lukiškės and Šiauliai remand prisons principally because of overcrowding and poor living conditions. The case was then stayed to allow Lithuania to consider whether assurances might be given to allay the court's concerns. Subsequently, Lithuania gave an assurance that all persons surrendered under an accusation warrant from the United Kingdom would be held in one of three prisons where they would be guaranteed a minimum allocation of no less than $3m^2$ per person in compliance with Article 3. Further, Lithuania assured the United Kingdom that all persons held in Lukiškės and Šiauliai would only be held in the refurbished or renovated parts of the prisons and in accordance with Article 3. In Jane v. Lithuania (No.2) [2018] EWHC 2691 (Admin), the Divisional Court accepted these assurances and therefore found that there was no real risk of a contravention of Article 3 such that Mr Jane's appeal against extradition was dismissed.

17. David Ball, who appears for the applicant, argues that while the assurances secured the position of remand prisoners, they did nothing to protect the position post-conviction. Accordingly, he argues that the applicant has the benefit of the assurances while on remand but, if convicted and sentenced to a term of imprisonment, he does not have the benefit of any assurance for the potentially longer period that he would spend in a Lithuanian correction house (or conviction prison). The difficulty with that submission is that the identified breach of Article 3 that called for assurances was in respect of the conditions in two prisons in the remand prison estate and not the conviction prisons. Jane is not general authority for the proposition that there is clear, cogent and compelling evidence amounting to something approaching an international consensus and identifying structural or systemic failings throughout the entire prison estate. Indeed, as Holroyde LJ observed in Bazyz & Besan v. Lithuania [2022] EWHC 1094 (Admin) at [24], following the closure of Lukiškės remand prison in 2019, the position was that Lithuania had lost the benefit of the presumption of compliance only in respect of Šiauliai remand prison (Jane (No.1)), but the August 2018 assurance had been held to be sufficient to exclude any real risk of a breach of Article 3 (Jane (No. 2)). Thus, Lithuania has not lost the benefit of the presumption in relation to detention in the conviction prisons.

18. The current version of the assurance is that given on 3 April 2020. It provides:

> "The Director General of the Prison Department under the Ministry of Justice of the Republic of Lithuania hereby assures and guarantees that the below stated conditions will be applied to all persons surrendered to the Republic of Lithuania from the United Kingdom on the grounds of the European Arrest Warrant ('EAW') for the purpose of a criminal prosecution during their detention:
>
> 1. All persons surrendered from the United Kingdom will be guaranteed a minimum space allocation of no less than 3 square metres per person and held in compliance with Article 3 of the European Convention on Human Rights.

2. All persons surrendered from the United Kingdom, if held in Šiauliai Remand Prison, will only be held in the refurbished or renovated parts of the prison and in compliance with Article 3 of the European Convention on Human Rights.
3. All persons surrendered from the United Kingdom, if convicted, that may spend a maximum of 10 days at Šiauliai Remand Prison will be subject to the same guarantees as contained in clause 1 and 2."

19. In Gerulskis v. Lithuania [2020] EWHC 1645 (Admin) and Bazyz, the Divisional Court rejected submissions that the court could not have confidence in the 2020 assurances.

20. The question of inter-prisoner violence was then litigated in a series of cases. In Bartulis v. Lithuania [2019] EWHC 3504 (Admin) and in Bazyz, the Divisional Court considered the CPT's 2019 report and concluded that the presumption of compliance with Article 3 remained intact in respect of the conviction prisons.

21. The CPT's 2023 report was considered in detail by the Divisional Court in Urbonas. Again, that appeal focused on concerns as to the state's alleged failure to control violence between prisoners. The court accepted that there was "a real, long-standing and continuing problem of inter-prisoner violence" within parts of the Lithuanian prison. In Barkauskas v. Lithuania [2024] EWHC 2815 (Admin), Fordham J reviewed the same issue following publication of the CPT's 2024 report. In both cases, the court emphasised the need to read the whole of the report together of course with the response of the Lithuanian government. Having done so, in both Urbonas and Barkauskas, the appellants failed to establish a real risk of breach of Article 3 arising from the acknowledged problem of inter-prisoner violence in the Lithuanian prison estate.

22. Mr Ball argues that neither case considered the broader issue, which he seeks to argue in this appeal, of material conditions. Hannah Hinton, who appears for the respondent, observes that a number of Lithuanian prison cases have now considered the 2023 report and the 2024 report has recently been considered in full by Fordham J. Even if the focus of the argument in those cases was different, she submits that implicitly the courts were not concerned that the reports evidenced a real risk of breach of Article 3 arising from broader prison conditions. In my judgment, there is some merit in Ms Hinton's argument that it is inherently unlikely that the experienced counsel and judges who respectively argued and decided those cases had missed something as straightforward as there being other Article 3 grounds for allowing the appeals. That said, judges decide the issues that are argued and I cannot therefore say that either Urbonas or Barkauskas is authority for the proposition that there is not currently a real risk of a breach of Article 3 arising from general prison conditions as opposed to inter-prisoner violence. I have therefore carefully read the CPT's 2023 and 2024 reports for myself, together with the responses of the Lithuanian government, in order to determine whether there is a reasonably arguable Article 3 appeal on the basis of general prison conditions.

23. In Urbonas, Lewis LJ made clear at [31] that the CPT's 2023 report should be regarded as providing "objective, reliable and specific" evidence that was up to date at December 2021. Such evidence should, he said, be given very considerable significance and weight. I take the same approach, although I note that a report based upon inspections of Lithuanian detention facilities between 10-21 December 2021 is now somewhat out of date.

24. In 2021, the CPT delegation inspected Alytus, Marijampolė and Pravieniškės Prisons. The key findings in respect of prison conditions were as follows:

24.1 Prison population (para. 29): The committee noted the steady decrease in the prison population but in all three prisons found that in a number of dormitories prisoners had less

than 4m² of personal living space and "in some, it was even less than the national minimum of 3.1m²". Two examples were given: in Marijampolė, 11 prisoners shared a 31m² dormitory providing only 2.8m² each; and 24 shared a 65m² dormitory providing only 2.7m² each.

24.2 Modernisation programme (paras 30-32): The committee welcomed the closure of Lukiškės but expressed concern about dormitory-style accommodation and urged Lithuania to speed up the transition to cellular accommodation.

24.3 Ill-treatment of prisoners (paras 34-36): The committee received hardly any allegations of the physical ill-treatment of prisoners by staff at Marijampolė and Pravieniškės, but the position was "very different" at Alytus where there were credible allegations of violence against prisoners being seen as a form of punishment for complaints about staff or prison conditions, verbal abuse, and threats to transfer prisoners to a notoriously difficult unit.

24.4 Inter-prisoner violence (paras 38-55): The committee was "highly concerned" that no significant progress had been made in reducing the scale of inter-prisoner violence. The core problems were the informal prisoner hierarchy, the prevalence of drugs, a lack of adequate staff, and the use of dormitory accommodation. The committee concluded that the situation of the so-called "untouchables" within the prison estate could be considered to amount to a breach of Article 3.

24.5 Prison conditions (paras 56-60): Prison conditions varied from satisfactory to very dilapidated:

a) Alytus (para. 57): Parts of Alytus were closed pending reconstruction as cellular accommodation. Previously reconstructed units offered generally acceptable conditions while older accommodation was in a particularly dilapidated state.

b) Marijampolė (paras 58-59): Some of the cell-type accommodation in Marijampolė was satisfactory while other units remained very dilapidated and there were many complaints that cells and dormitories were infested with bed bugs and cockroaches. The committee saw blood stains on the walls from crushed insects. Three other units were not sufficiently heated. The conditions in four temporary detention cells in the KTP block were of "immediate concern" and could be described as "inhuman and degrading." These cells were totally dilapidated with barely 1.1m between the walls with a hole in the corner serving as a toilet which had to be covered to prevent the ingress of rats. Prison records showed that these cells were being used to keep prisoners for up to 30 days for disciplinary punishments. In light of these findings, the delegation requested the Lithuanian authorities to take these four cells immediately out of service. The authorities complied and demolished the cells.

c) Pravieniškės (para. 60): Conditions were generally satisfactory in the reconstructed units. Conditions in the unrenovated parts of the prison were very poor with crumbling mouldy walls and decrepit furniture. The cells were inadequately ventilated and heated, and the delegation was "flooded" with complaints about bed bugs and cockroaches. The exercise yard for life prisoners was austere and too small for genuine physical exercise.

24.6 Regime (para. 64): The quantity of work and education was far from satisfactory and many prisoners had no purposeful activity.

24.7 Healthcare (paras 66-82): Primary healthcare was adequate but understaffed. Access to specialist care was a serious concern. There was inadequate recording of injuries and the committee was very concerned at the lack of progress in providing assistance to prisoners with drug-related problems.

24.8 Visiting time (para. 83): The visiting entitlement for prisoners on strict regimes was inadequate.

24.9 Disciplinary sanctions (paras 84-87): The committee urged review of the regime for prisoners in cellular confinement.

25. As Mr Ball observes, the CPT's 2024 report focused on the issue of inter-prisoner violence. More generally, it reported a decreased prison population, better support for addiction and employment, and improved social contact with prisoners' families.

26. Clearly the 2023 report raised serious concerns about the Lithuanian prison estate. In my judgment, only three matters, however, arguably require closer analysis as potentially meeting the threshold of severity required to establish a breach of Article 3:

    26.1 The most obvious case – which is no doubt why it was the point argued in Urbonas and Barkauskas – was the risk of inter-prisoner violence.

    26.2 The situation in the four temporary detention cells in Marijampolė.

    26.3 The use of dormitories in Marijampolė with less than $3m^2$ of personal space.

27. As to the risk of inter-prisoner violence, it has been authoritatively decided that this does not on current evidence give rise to a real risk of breach of Article 3. Indeed, the point is not now argued. Even if it were, in light of the decisions in Urbonas and Barkauskas, the applicant could not hope to persuade the court that such an appeal would be reasonably arguable.

28. The situation in the four temporary detention cells in Marijampolė's KTP block was appalling and arguably imprisonment in those small, dilapidated, unsanitary and rat-infested cells would have amounted to inhuman and degrading treatment. It would, however, have been difficult to establish that there was evidence of a systemic failure to comply with Article 3 and, in any event, these cells were immediately taken out of use and demolished.

29. That leaves the inadequate dormitory accommodation in Marijampolė. Even if evidence of a wider systemic problem, the response of the Lithuanian government makes clear that, in modernising the estate, Lithuania is seeking to achieve a minimum of $5m^2$ in multi-occupancy and $7m^2$ in single-occupancy cells. While the percentage of cells that provided less than $4m^2$ in 2021 was worryingly high, that is of course to assess Lithuania against a standard in excess of that generally recognised as the limit for what is acceptable of $3m^2$: see Muršić v. Croatia (2017) 65 E.H.R.R. 1, at [137].

30. Where cell accommodation provides between 3 and $4m^2$ of personal space, some other aspect of inappropriate physical conditions would usually be required to support a finding of breach of Article 3: see Muršić, at [139]. Here, Mr Ball relies on the findings of staff abuse, bed bugs, cockroaches, inadequate heating and the small yard for life prisoners.

31. By its response to the 2023 report, the Lithuanian government explained the ongoing modernisation programme. It reported that half of the prison estate had been upgraded and that it was expected that by the end of 2023 all prisoners would have at least $4m^2$ of living space. Further, Lithuania advised that steps were being taken to resolve the issues identified by Mr Ball through staff training, a zero-tolerance approach to violence and other abuse against prisoners, the widespread installation of video cameras and the compulsory use of body-worn cameras to record incidents, new flooring, the use of disinfectants, improvement works to heating systems, and enlargement of exercise yards.

32. I am not satisfied on the basis of these criticisms of prison conditions in 2021 and taking into account the government's response that there is up-to-date evidence of anything approaching an international consensus of structural or systemic failings in the wider Lithuanian prison estate that could properly rebut the presumption of compliance. Further, like any other prisoner extradited on an accusation warrant, the applicant would have the benefit of assurances that he will not be held post-conviction

in Šiauliai prison (the only remaining prison that does not have the benefit of the presumption) in conditions that would breach Article 3.

33. Accordingly, I conclude that the applicant's appeal is not reasonably arguable and I refuse his application for permission to appeal.