Neutral Citation Number: [2014] EWHC 437 (Admin)

Case Nos: CO/11054/2013; CO/11056/2013; CO/11118/2013; CO/11314/2013; CO/11269/2013; CO/11309/2013; CO/11310/2013.

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/02/2014

Before :

LORD JUSTICE MOSES
MR JUSTICE JAY

- -

Between :

(1) ARUNAS ALEKSYNAS **(2) GINTARAS LAPINSKAS** **(3) AURIMAS PETRONIS** **(4) STASYS PODREZAS** **(5) RIMAS DANIELIUS** **(6) EDGARAS GUDAUSKAS** **(7) PETRAS ZIDECKAS**	**Appellants**
- and -	
(1) MINISTER OF JUSTICE, REPUBLIC OF LITHUANIA **(2) PROSECUTOR GENERAL, REPUBLIC OF LITHUANIA**	**Respondents**

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Mr David Josse QC and Ms Mary Westcott (instructed by **Dalton Holmes Gray**) for the **First Appellant**
Mr David Josse QC and Mr David Williams (instructed by **Dalton Holmes Gray**) for the **Second Appellant**
Mr David Josse QC and Mr David Williams (instructed by **TV Edwards LLP**) for the **Third Appellant**
Mr David Josse QC and Ms Amelia Nice (instructed by **Kaim Todner Solicitors LLP**) for the **Fourth Appellant**
Mr David Josse QC and Mr R Jesurum (instructed by **Lansbury Worthington Solicitors**) for the **Fifth Appellant**
Mr David Josse QC and Miss Natasha Draycott (instructed by **Kaim Todner Solicitors LLP**) for the **Sixth Appellant**
Mr David Josse QC and Mr Ben Cooper (instructed by **Kaim Todner Solicitors LLP**) for the **Seventh Appellant**
Mr Alun Jones QC and Mr J Stansfeld (instructed by CPS, Extradition Unit) for the **Respondents**

Hearing dates: 3rd and 4th February 2014

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Judgment

MR JUSTICE JAY:

Introduction

1. These are seven appeals brought under section 26 of the Extradition Act 2003 ("the 2003 Act") against the orders of the Senior District Judge given on 9th August 2013 that the Appellants be extradited to the Republic of Lithuania. The Ministry of Justice, Republic of Lithuania, is the Respondent to the appeals of Mr Arunas Aleksynas, Mr Rimas Danielius, Mr Edgaras Gudauskas and Mr Stasys Podrezas, whose extraditions are being sought for the purposes of executing custodial sentences ("the conviction cases"). The Prosecutor General's Office of the Republic of Lithuania is the Respondent to the appeals of Mr Aurimas Petronis, Mr Gintaras Lapinskas and Mr Petras Zideckas whose extraditions are being sought for the purposes of prosecution ("the accusation cases").

2. The First Respondent accepts that the appeals of Mr Podrezas and Mr Gudauskas should be allowed: the former on the basis that the European Arrest Warrant was not issued by a judicial authority (see Bucnys v Ministry of Justice, Republic of Lithuania and others [2013] 3 WLR 1485); the latter on the basis that he has only one day of his sentence left to serve. Pursuant to our direction at the start of the hearing, orders for their discharge have therefore been made under section 27(5)(a) of the 2003 Act.

3. Lithuania became an independent Republic on 11th March 1990 following the disintegration of the Soviet Union. It joined the Council of Europe on 14th May 1993 and acceded to the European Union in 2004. In such circumstances Lithuania has been designated a Category 1 territory pursuant to section 1 of the 2003 Act, and Part 1 accordingly applies.

4. Notwithstanding paragraph 11 of the Respondents' Skeleton Argument, it now appears that no issue arises in this appeal whether evidence which post-dated the Senior District Judge's decision was 'not available at the extradition hearing' for the purposes of section 27(4)(a). Evidence bearing on the Appellants' abuse of process argument came to light after 9th August 2013, and Mr Alun Jones QC for the Respondents indicated that he would not take a point under section 27(4)(b) in relation to evidence of admittedly limited significance bearing on the Article 3 issue.

5. The issues arising in the five remaining appeals are as follows:

    (i) whether assurances given by the Vice-Minister of Justice amount to an abuse of the process of the Court such that they cannot be relied on (this issue relates only to the accusation cases).

    (ii) whether, in the light of (i) above or independently, and in view of prevailing conditions in Lithuanian police stations, remand prisons and prisons for convicted persons, extradition would violate the Appellants' rights under Article 3 of the ECHR (this issue relates to all the Appellants, although the potential interplay with issue (i) applies only to the accusation cases).

(iii) whether, in the cases of Messrs Aleksynas and Danielius, extradition would be disproportionate and/or in breach of their rights under Article 8 of the ECHR.

6. These issues are of general application to Lithuanian extradition cases, and a number of similar cases have been held in abeyance in Westminster Magistrates' Court awaiting the outcome. We were informed that there have been 34 accusation cases extradited to Lithuania since 20th March 2013 and that there are 55 pending cases.

7. The legal issues governing the five remaining appeals are not significantly in dispute, and the Appellants do not contend that the Senior District Judge perpetrated legal errors. These appeals are brought under section 26(3) of the 2003 Act on questions of fact. In relation to issue (i) above, the Court's task is to assess whether the relevant assurances may properly be relied on by the Respondents; and in relation to issue (ii) above this Court's task is to evaluate all the available evidence as to prevailing conditions in Lithuania.

The Circumstances of the Individual Appellants

Mr Arunas Aleksynas

8. Mr Aleksynas was born on 12th April 1994. On 29th August 2008, when he was just 14, he kicked a young man to the chest who fell to the ground, hit his head on the concrete floor, and sustained what appears to have been a serious head injury. On 15th June 2009 Mr Aleksynas received a suspended sentence of two years' imprisonment at the Šakiai Region District Court **[File B/tab 2/page 3]**. This sentence was suspended for two years subject to conditions, namely *'restriction on behaviour for 12 months and prohibiting from changing the place of residence without the knowledge of the institution controlling the restriction on behaviour'.* The EAW states that Mr Aleksynas did not comply with these conditions (presumably within the stated 12 month period) and on 14th February 2011 the suspended sentence was activated. Mr Aleksynas left Lithuania for the UK in March 2011.

Mr Rimas Danielius

9. Mr Danielius was born on 3rd December 1971. On 2nd July 2010 he received a sentence of 18 months' imprisonment imposed by the Kaunas Region District Court for an offence of burglary committed on 12th April 2003. The sentence was suspended but its execution was ordered on 22nd February 2011, on account of his failure to comply with the conditions of the suspension **[File B/tab 3/page 14]**. Mr Danielius absconded before serving the whole of his sentence: the European Arrest Warrant records that the period remaining to be served is 1 year, 2 months and 26 days.

Mr Aurimas Petronis

10. Mr Petronis was born on 10th June 1987. He is accused of committing one offence of violent robbery committed on 8th December 2007 **[File B/tab 6/page 48]**, the maximum sentence for which is six years' imprisonment. On 6th January 2009 the District Court of the Alytus Region issued the arrest warrant.

Mr Gintaras Lapinskas

11. Mr Lapinskas was born on 13th August 1985. He is accused of committing an offence of theft of LTL 45,000 from a home in the Kaunas District between October 2011 and 13th March 2012, the maximum sentence for which is eight years' imprisonment **[File B/tab 7/page 59]**. The arrest warrant was issued by the District Court of the Kaunas Region on 7th December 2012.

Mr Petras Zideckas

12. Mr Zideckas was born on 25th February 1984. He is accused of committing an offence of robbery and an offence of causing grievous bodily harm, both against the same victim, on 21st November 2004 **[File B/tab 8/page 72]**. The maximum sentence for the offence of robbery is six years' imprisonment and the maximum sentence for the offence of causing grievous bodily harm is twelve years' imprisonment. The arrest warrant was issued by the Kaunas Regional Court as long ago as 25th May 2005.

The Consequences of Extradition for these Appellants

13. In the two remaining conviction cases (viz. Mr Aleksynas and Mr Danielius), the Lithuanian authorities have been unable to specify the correctional facility into which these men would be placed upon return to that jurisdiction. This is because the relevant authorities would be taking into account a number of fluid factors including *'the personality of the offender, [and] the nature and dangerousness of the committed crime'* **[File B/tab 10/page 87]**. This is no doubt significant for Article 3 purposes inasmuch as the entirety of the adult prison estate in Lithuania therefore falls under scrutiny for present purposes.

14. The position is different as regards the accusation cases (viz. Messrs Petronis, Lapinskas and Zideckas). In their cases it is common ground that the 'territorial principle' applies: in other words, that they will be remanded in custody to the remand prison within or closest to the town or district whose court has issued the arrest warrant. There are three remand prisons in Lithuania, namely Kaunas, Lukiskes (this is the Anglicisation of the Lithuanian, Lukiškių) and Šiauliai. Subject to the application of the assurances on which the Respondents place heavy reliance, it is clear that Mr Petronis would be remanded to Lukiskes remand prison. Messrs Lapinskas and Zideckas, on the other hand, would always have been remanded to Kaunas remand prison regardless of the terms of the assurances which designate that institution as the sole remand prison for all Lithuanian nationals extradited from the UK.

15. The accusation cases are likely to be subjected to a period or periods of police detention both during the investigation of their cases and any criminal trial. These Appellants submit that there is a real risk that the conditions to which they would be exposed constitute inhuman or degrading treatment under the rubric of Article 3. At this stage it is sufficient to state that the better view of the evidence is that these Appellants would probably be incarcerated in the police station nearest to the investigating court, and almost certainly within the relevant district. For Mr Petronis, this would mean Alytus Police Detention Centre, and for Messrs Lapinskas and Zideckas, Kaunas City Police Detention centre.

16. As will be made clear, the available evidence as to conditions in these various institutions differs considerably.

The Assurances

17. On 22nd March 2013 the Queen's Bench Division in Northern Ireland held in Lithuania v Liam Campbell [2013] NIQB 19 that, in the absence of any assurance by the Lithuanian authorities to the contrary, the extradition of Mr Campbell to Lukiskes remand prison would amount to a violation of his Article 3 rights. On 16th April 2013 the High Court of the Republic of Ireland came to a similar conclusion in The Minister of Justice v McGuigan [2013] IEHC 216.

18. Even before these decisions were promulgated, there may well have been concerns in Lithuania as to the probable outcome. At all events the evidence shows that on 13th March 2013 the Prosecutor General's Office of the Republic of Lithuania wrote to the Ministry of Justice seeking answers to three questions. On 20th March the Vice-Minister of Justice, Mr Saulius Stripeika, provided the information sought **[File B/tab 9/pages 82-83]**. He noted that international organisations and Lithuanian national authorities had criticised the conditions in remand prisons, typically on the basis of overcrowding, and he asserted that Kaunas remand prison was not overcrowded. He also noted that the Deputy Director of the Prisons department had the power to disapply the territorial principle. Accordingly:

> "Considering the abovementioned, we hereby inform that Director of Prisons Department shall ensure that all detainees transferred from the United Kingdom will be held in Kaunas Remand Prison during the entire period of pre-trial investigation and case hearing in the court."

19. Mr Stripeika's letter made no express reference to conditions in police detention except to observe that the Ministry of the Interior was competent to opine on those matters.

20. On 12th June 2013 Mr Stripeika wrote to the Prosecutor General's Office, copying his letter to the Prisons Department, Kaunas Remand Prison and Kaunas Juvenile Remand Prison, Correctional Facility **[File B/tab 10/pages 86-88]**. He undertook on behalf of his Ministry that individuals extradited from the UK to Lithuania would be held subject to the following three conditions:

> "1. The Director of the Prisons Department … assures that these persons will be held at Kaunas Remand Prison, or on exceptional basis, at Kaunas Juvenile Remand Prison – Correctional Facility.
>
> 2. The persons will be held in the facilities stated in clause 1 until the end of the detention time or until they are transferred to correctional facilities to serve a sentence of imprisonment (after the judgment of conviction has come into force), i.e. until the detention will be applied during the pre-trial or trial process.
>
> 3. This assurance may be withdrawn only prior to written notice to the CPS of the UK and such a withdrawal will be applied to the persons who are surrendered to the Republic of Lithuania by the UK after this withdrawal."

21. The Vice-Minister's letter also explained the system for transferring remand prisoners to courts. Specifically:

> "While conducting the convoy the protection of detainees shall be assured and the requirements of isolated custody shall be preserved. It should be noted that during the trial the detainees usually are transported directly from the remand prisons to the courts and backwards, and only in exceptional cases they can be transferred to police detentions but not longer than for a term of 15 days. The attention should be paid to the fact that the decision on transferring the detainees from the remand prison to the territorial police detention shall be adopted by the pre-trial investigation officer or a prosecutor or court."

22. Thus, detainees would not necessarily be incarcerated at Kaunas Remand Prison at all material times: during the trial process (which appears to include pre-trial investigation) they might be held in police stations according to decisions made by those for whom the Ministry of Justice was not responsible.

23. On 17th June 2013 the Deputy Chief Prosecutor, Mr Tomas Krušna, wrote to the CPS **[File B/tab 11/pages 92-93]** reiterating the point that detainees might be held in territorial police custody for up to 15 days *'for the purpose of carrying out the pre-trial investigation actions or hearings in court'*. He also explained that on return to Lithuania pursuant to the extradition process persons could be held in territorial police custody for up to 48 hours pending a hearing before a judge. Thereafter, the Vice-Minister's assurance would apply.

24. On 28th June 2013 Mr Krušna wrote to the CPS setting out his view as to the validity of the assurances given by the Vice-Minister **[File B/tab 12/page 95]**. He explained that the three remand prisons were institutions subordinated to the Prisons department which in turn operated under the aegis of the Ministry of Justice. The Vice-Minister was empowered to give assurances on behalf of his department, and it followed that those assurances bound the Prisons department and those within it who were responsible for allocating remand places. It is clear from other correspondence that

the individuals responsible for that exercise were the Director of the Prisons department and those working under his direction. The only point I would highlight at this stage is that it is unclear why he gave this explanation to the CPS rather than someone of authority within the Ministry of Justice.

25. On 5th July 2013 Mr Stripeika repeated the assurances he had given on 12th June, save that clause 1 was worded slightly differently **[File B/tab 13/pages 96-97]**:

> "1. The Director of Prisons Department under the Ministry of Justice of the republic of Lithuania … guarantees that these persons will be held at Kaunas Remand Prison, or at Kaunas Juvenile Remand Prison – Correctional Facility (wherein the adult detainees could be held too)."

26. The hearing before the Senior District Judge was concluded on 1st August 2013 and he handed down his judgment on 9th August. He had the benefit of all the documentary materials I have summarised. The Senior District Judge also heard from a number of witnesses in relation to the assurances. Professor Morgan, a leading and well-respected expert in prison conditions throughout Europe, accepted that conditions in Kaunas Remand Prison were not such as to create a real risk of Article 3 violations for persons detained there. However, he was concerned about the validity and scope of the assurances, in particular *'he was unable to preclude the possibility that individual defendants facing accusations may be detained for a period of up to 15 days in police custody for further investigation at the request of the prosecutor'* **[File A/tab 10/page 117]**. Although Professor Morgan's first report recognised that conditions at Kaunas City Police Detention Centre were good **[File A/tab 11/page 155]**, his oral evidence to the Senior District Judge was as follows:

> "In conclusion Professor Morgan found that there is an ambiguity regarding the assurance. If the assurance does not preclude one or more of the defendants from being held for periods in police detention, with the result that they were indeed held for a period in police detention, then there is a high risk of being held in inhuman or degrading conditions." **[File A/tab 10/page 118]**

27. Mr Karolis Liutkevičius also gave evidence for the Appellants in line with his report **[File B/tab 25]**. As for the assurances, his evidence was recorded by the Senior District Judge as follows:

> "Viewed purely formally, the obligation on the part of the Vice-Minister of Justice is not binding on the Minister of Justice. However at a practical level there is no reason to believe the assurance would not be honoured. He believes that it would be honoured." **[File A/tab 10/page 119]**

28. Ms Ingrida Botryiene gave evidence along similar lines in relation to the strict legal position although she drew the contrary inference: in her view, the fact that they were not legally binding meant that they could not be implemented **[File A/tab 10/page 121]**.

29. The Senior District Judge's conclusion was that the assurances would be followed in practice even if – contrary to his view of the matter – they were not legally binding **[File A/tab 10/pages 124-125]**. He based his conclusion on what he called *'the essential and necessary respect for the authorities'*. He noted that the Lithuanian authorities, including the prosecutors and the courts, would want to adhere both to the spirit and the letter of the assurances given **[File A/tab 10/page 127]**. He accepted that it was possible that some pre-detention time would be spent at a police station. On my understanding, the Senior District Judge did not deal with the point covered in 21 above that during the trial process itself (which must be deemed to include pre-trial investigations) accused persons might be held at police stations, although later in his judgment he addressed the conditions at Alytus and Kaunas police stations on the basis that these were the only stations relevant to these Appellants. I will be returning to that matter in due course.

30. The Appellants' primary case is not so much that the Senior District Judge erred on the material before him, but that material which has subsequently come to light demonstrates that (a) the Westminster Magistrates' Court was misled, and (b) the assurances cannot be regarded as reliable.

31. On 8th October 2013 Mr Krušna wrote to the CPS to explain the case of Mr Aleksandras Misaniukas **[File B/tab 16/page 103]**. He was extradited to Lithuania on 8th August 2013 and was placed in Lukiskes Remand Prison. The explanation given at that stage was that the UK had failed to provide any information to the Lithuanian authorities whether Mr Misaniukas had consented to his extradition. In the absence of such information the Vilnius District Prosecutor's Office remanded him to Lukiskes (it should be noted that this institution is in Vilnius). Rightly, Mr Alun Jones conceded that this action was in breach of the assurances, which clearly did not place consent cases into any different category.

32. On 21st October 2013 Mr Krušna wrote again to the CPS and claimed that *'the above assurance indeed is respected'* **[File A/tab 17/page 105]**. He stated that Mr Misaniukas would be transferred to Kaunas Remand Prison.

33. On 23rd October 2013 Mr Krušna came to the UK and gave evidence in English at the Westminster Magistrates' Court before District Judge Zani in cases involving Messrs Antonov and Baranauskas. Unusually, that evidence was transcribed. Mr Kaunas was asked about the validity of the assurances in the context of their provenance – the Ministry of Justice rather than the Prosecutor General's Office. He said this:

> "I am saying it is indeed complex issue which involves the cooperation of various bodies and in practical terms those assurances are executed but I believe so, so we now in my capacity as a prosecutor presenting evidence in relation to the case of Mr Antonov and Mr Baranauskas." **[File A/tab 7/pages 55-56]**

Later, Mr Krušna testified that local prosecutors did not know about the existence of the assurances because these were restricted documents **[File A/tab 7/page 58]**, and that what he described as 'operational issues' sometimes prevented extradited persons from being transferred to Kaunas Remand Prison as a matter of course **[File A/tab 7/page 61]**.

34. On 31st October 2013 the Prosecutor General, Mr Darius Valys, wrote to the CPS confirming that Mr Misaniukas and another accused person, Mr Andrius Bajoras, were now in Kaunas Remand Prison **[File B/tab 18/page 107]**. The CPS must have raised concerns about Mr Bajoras behind the scenes, and it is clear from other evidence in this appeal (see paragraph 7 of the witness statement of Ms Katy Smart **[File A/tab 4/page 25]**) that this individual ended up at Kaunas via Šiauliai Remand Prison and a police station at Panevezys. Certainly in relation to the period of detention at Šiauliai, it is clear that a breach of the assurances had taken place.

35. Mr Valys gave the CPS a different explanation regarding Mr Misaniukas' incarceration at Lukiskes. His contention was that the assurances should not be applied retrospectively: this individual's extradition had been ordered in August 2012 but he was not returned to Lithuania until August 2013, and the relevant date for this purpose was the earlier. Mr Jones did not seek to support this reasoning.

36. However, in a more constructive vein Mr Valys concluded his letter to the CPS as follows:

> "Currently the Prosecutor General's Office closely observes and commissions the competent institutions to ensure that **all** detainees extradited from the United Kingdom for the purpose of the criminal prosecution were held at Kaunas Remand Prison. Today, i.e. on 31 October a meeting with the representatives of these institutions has taken place, during which all actions have been arranged in order to achieve an immaculate working of assurance implementation mechanism."

37. On 6th November 2013 Mr Stripeika wrote to the CPS with an update **[File B/tab 19/pages 109-120]**. He accepted that 'a few persons' had been held in other remand prisons before their transfer to Kaunas. Without giving names, he mentioned one individual who had given written consent to being held in Šiauliai, and two others (presumably, Messrs Misaniukas and Bajoras) who were temporarily detained elsewhere. That said, as matters now stood everyone would be detailed at Kaunas *'until the end of trial or the moment they are freed from the remand prison'*. Finally:

> "It should be noted that a meeting [presumably held on 31st October 2013] with representatives of Ministry of Justice, Prosecutor General's Office and Prison Department under the Ministry of Justice was organised in order to solve the problems arisen. To avoid particular deviations in the future it was decided that persons surrendered from the United Kingdom to the Republic of Lithuania pursuant to a EAW will be directly transferred to Kaunas Remand Prison without any temporal detention in other institutions providing detention. In addition, the Director of Prison Department has also repeated his instructions given to the administrations of the institutions subordinated to him concerning the detention procedure of persons surrendered from the United Kingdom to the Republic of Lithuania pursuant to a EAW at Kaunas Remand Prison or at Kaunas Juvenile Remand Prison – Correctional Facility.

> With respect to the above-said, we believe that all questions raised have been solved and all institutions participating in this procedure understand the content of the assurances given by the Ministry of Justice and their implementation procedure in a similar way."

38. On 21st November 2013 Mr Stripeika wrote to the Prosecutor General's Office (as with previous correspondence, intending onward transmission to the CPS) answering various questions the CPS had posed **[File B/tab 20/pages 111-112]**. The CPS's letter to its counterpart in Lithuania has not been provided. Mr Stripeika pointed out that the Ministry of Justice was not competent to deal with police detention, whether in the context of pre-trial investigative procedures or court hearings, and that the assurances did not therefore cover pre-trial investigation officers, prosecutors or the courts. Mr Stripeika confirmed that the upshot of the 31st October meeting was that persons extradited from the UK to Lithuania would be held only at Kaunas and *'would be convoyed to/back from the detention centres of territorial police units directly'*. Furthermore, on 31st October the Prisons Department wrote to Šiauliai and Lukiskes Remand Prisons ordering them not to detain individuals extradited from the UK in their establishments.

39. Up to this point, the terms of Mr Stripeika's letter are clear enough, but both parties have taken time to parse the following three sentences, which are said to give rise to ambiguity:

> "It should be noted though that after the said meeting establishments subordinate to the Prisons Department continue receiving decisions made by competent officers and the courts on convoying the persons in question to (via) establishments in which they cannot actually be held on the grounds of the commitments undertaken, for the purpose of carrying out pre-trial investigation actions or case hearing in the court … Therefore, we request the Prosecutor General's Office of the Republic of Lithuania to ensure within its competence that the persons who have surrendered from the United Kingdom to the Republic of Lithuania under the European Arrest Warrant are not transferred from Kaunas … to (via) Šiauliai Remand Prison or Lukiskes Remand Prison. If Prosecutor General's Office of the Republic of Lithuania cannot ensure the abovementioned measures, please inform the Ministry of Justice of the Republic of Lithuania, the Prisons Department and the UK Crown Prosecution Service about it."

40. Mr David Josse QC for the Appellants submitted that this amounted to an acceptance by Mr Stripeika that the Ministry of Justice was unable to prevent extradited persons being held other than at Kaunas. The matter fell within the competence of other departments, including the Prosecutor General's Office, and none of these had given a relevant assurance. Moreover, and I will need to revert to this point in the context of Mr Josse's abuse of process argument, this letter shows that the Lithuanian authorities had seriously misled the Senior District Judge in the summer of last year.

41. Whether or not the Senior District Judge was misled falls to be addressed subsequently, but at this juncture it is convenient to deal with the meaning and purport of Mr Stripeika's letter. It is true that it needs to be read a number of times fully to be understood, and it is also true that some nuance may have been lost in the translation. Ultimately, however, what the Vice-Minister is saying is clear enough. First, and has already been pointed out, it was agreed at the high-level meeting on 31st October that detainees would be held only at Kaunas and that arrangements would be made to ensure that the two other remand prisons would not accept and keep persons extradited from the UK at their establishments. Secondly, the letter recognises that, notwithstanding the above, decisions might continue to be made by pre-trial investigation officers, prosecutors and courts requesting that such persons be held at the two other remand prisons. Further and different action would have to be taken to prevent that from happening. Thirdly, the Prosecutor General's Office, as the responsible department for these decision-makers, was adjured to ensure, to the extent that it could, that these individuals would not be transferred to Šiauliai or Lukiskes, and to inform the relevant authorities, including the CPS here, if that did not happen.

42. The letter refers to the possibility of persons being held at police detention centres for the purposes of carrying out pre-trial investigative actions or case hearings, but does not state in terms that steps should be taken to avoid this. I infer that it was not the Vice-Minister's intention to place obstacles in the way of this happening. The Republic of Lithuania has taken the clear position in other correspondence that Article 3 could not be violated if persons were held at police detention centres for short periods of time. Indeed, that point was made expressly in Mr Krušna's letter to the CPS dated 22nd November 2013 **[File B/tab 21/pages 115-116]**.

43. Mr Krušna's letter is also helpful in explaining the new procedures to be emplaced to ensure that prosecutors and courts would act on the ground in a manner compliant with the assurances. Mr Krušna also asked the CPS *'to uphold the position that former instances, where a few persons for some period of time were held not at Kaunas Remand Prison due to different understanding on the application of the assurance, should be neither treated as breaches of the assurance, nor have any impact on the extradition cases pursuant to the EAW currently dealt before the United Kingdom Court'*.

44. The last letter in this sequence was written by the Chief Prosecutor, Mr Simonas Slapšinskas, on 13th December 2013 **[File B/tab 22/pages 119-121]**. He provided further information regarding police detention. This only took place in cases of necessity and could not endure for longer than 15 days. As regards Mr Stripeika's request to the Prosecutor General's Office (as set out under paragraph 39 above):

> "The Prosecutor General's Office additionally informed in written [sic] the courts, prosecution offices and pre-trial investigation offices of the Republic of Lithuania about the assurance granted by the Ministry of Justice and implementation thereof, in such a way ensuring that the courts did not adopt decisions on temporal transfer of the detainees from the Kaunas Remand Prison to Lukiskes and Šiauliai Remand Prisons for the purpose of carrying out the pre-trial investigation acts or trials in court."

45. As regards earlier misunderstandings, Mr Slapšinskas explained that one individual, Mr Džiužas, was held in a prison hospital for a short period, and Mr Sokolovskij was held at Lukiskes for four days in November 2013 before being returned to Kaunas because he wanted to attend a hearing at the Vilnius Regional Court. Notwithstanding what in my view were clear breaches of the assurances, for the future:

> "As we have mentioned before, for today all institutions responsible for convoying the detainees to certain destinations are informed that the persons subject to the assurance even on temporal basis cannot be transferred to Lukiskes and Šiauliai Remand Prisons, and the latter prisons are informed not to accept such persons."

46. Since mid-November 2013 no instances of alleged or apparent breaches of the assurances have been communicated to the CPS or come to the notice of those advising the Appellants.

Conditions in Lithuanian Penal and Police Establishments

47. The Court has received evidence from a number of sources. These include material in the public domain (placed in the two files marked **D1** and **D2**), expert evidence adduced for the purposes of these proceedings, and judicial decisions decided domestically, in parallel Courts in Eire and Northern Ireland, and in Strasbourg. The public domain evidence has been helpfully synthesised in the form of two schedules prepared by the Appellants' legal team and a competing schedule by the Respondents. I have accepted the parties' invitation to review the underlying material.

48. I reject the view that conditions are likely to be homogeneous across Lithuania, irrespective of the nature of the institution under scrutiny. At the very least, consideration must be given to the different types of institution (viz. police detention units, remand prisons and prisons for convicted persons), and to the extent that is possible, to differentiate units and institutions within those categories.

The Remand Prisons

49. As regards the three remand prisons it is possible to take this shortcut. No issue arises as to the Article 3 compliance of Kaunas Remand Prison. Brother Judges in the Republic of Ireland and Northern Ireland have convincingly demonstrated that conditions in Lukiskes Remand Prison are so egregiously bad that persons detained there would suffer a real risk of a violation of their Article 3 rights. Mr Alun Jones realistically submitted that this Court 'will probably' adopt a similar approach, and I do. All the available evidence, in particular Professor Morgan's, clearly shows that conditions at Lukiskes breach Article 3.

50. I should not be taken as having overlooked the decisions of this Court in Janovic v Prosecutor General's Office, Lithuania [2011] EWHC 710 (Admin) or of Collins J in Nesukatis v Republic of Lithuania [2013] EWHC 304 (Admin). The arguments in

those cases were advanced along slightly different lines, the expert evidence of Professor Morgan was less effectively deployed, and in any event I regard those decisions as superseded by Campbell and McGuigan.

51. The stigmatisation of Lukiskes as non-Article 3 compliant is sufficient for the present purposes of the three accused cases. I say that for these reasons. If the Respondents are entitled to rely on the assurances, none of the accused cases will be detained elsewhere than in Kaunas. If, on the other hand, the Respondents cannot properly do so, it is agreed that Mr Petronis would be held at Lukiskes. As I have already pointed out, Messrs Lapinskas and Zideckas will be held at Kaunas whatever the status of the assurances. It follows that no issue arises in these appeals as to the acceptability of Šiauliai Remand Prison.

The Prisons for Convicted Persons

52. It is important from the Appellant's perspective to underscore two matters. First, it is not possible to say in advance to which prison a convicted person will be sent; that depends on the assessment of a number of factors, which have already been mentioned. Secondly, the quality of the prisons for convicted persons is an issue not merely for the two remaining conviction cases but also for the accusation cases, since the possibility that they may in due course be convicted cannot be discounted.

53. Here, the evidence is considerably less expansive than that bearing on remand prisons and police detention centres. A possible, albeit not necessary, inference is that conditions in the prisons for convicted persons have been less cause for concern over the years. The Appellants adhere to their submission that they face a real risk of an Article 3 violation if required to serve a sentence of imprisonment anywhere in Lithuania. The Respondents' riposte is that there is far from sufficient evidence to enable this Court to reach such a serious conclusion.

54. At this stage I propose to summarise the salient evidence. I will explain my conclusions subsequently.

55. The material in the public domain is derived from two sources. First, there are the reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT"). Secondly, there are the reports from the Seimas Ombudsmen of Lithuania, a domestic NGO with responsibility in the domain of human rights violations. Since the beginning of the millennium there have been a number of reports from both of these entities.

56. The early reports appear to centre on inter-prisoner violence, a gang sub-culture within prisons, over-use of solitary confinement and other disciplinary sanctions, and overcrowding. Many of the prisons were quite old (Lukiskes Remand Prison dates from the twilight of the Tsarist era) and underfunding was a constant refrain.

57. The Seimas Ombudsmen's report for 2007 was based on the various complaints this body had received from serving prisoners as well as on visits to Pravieniškes Correctional Facility No 1 and Kybartai Correctional Facility. The report concluded that there were insufficient officers in imprisonment institutions, and that prisons were

failing in achieving their objective of social rehabilitation **[File D2/tab 14/pages 592-593]**. Concerns were expressed about inter-prisoner violence and sub-cultures, poor healthcare, overly draconian punishment regimes and poor working conditions. However, I do not read this report as suggesting anything close to violations of Article 3 of the ECHR.

58. On 25th June 2009 CPT submitted its report to the Lithuanian Government following a visit which took place in late April 2008 **[File D1/tab 5]**. This report embraced a number of establishments but on my understanding only three prisons for convicted persons **[File D1/tab 5/page 260]**. Only one of the prisons (Pravieniškes-2 Correction Home) was deemed to be overcrowded (c.f. the remand prisons). However, criticism was levelled as to physical ill-treatment meted out by staff **[File D1/tab 5/page 273]**, inter-prisoner violence **[File D1/tab 5/page 275]** and the lack of protection of vulnerable prisoners **[File D1/tab 5/page 276]**. Further, some criticism was made as to the lack of cleaning products and facilities, inadequate mattresses and sanitary facilities which *'left much to be desired'* **[File D1/tab 5/page 276]**. Other strictures were applied to poor ventilation and heating, the inadequate management of drug-addicted prisoners, and overly-zealous punishment.

59. My attention was drawn to the Seimas Ombudsmen's report for 2009 which I have considered with care **[File D2/tab 17]**. Regrettably, pages 33-34 of the Appellants' second schedule are guilty of over-stating the position. The references to the carrying out of 26 investigations on the initiative of the Ombudsmen should not be read as applying just to prisons. These investigations relate to a whole series of concerns across public life, only one type of which is specified as being '*infringements of human dignity and privacy in the course of searches in Alytus House of Correction'* **[File D2/tab 17/page 682]**. This does not establish a real risk of Article 3 violations.

60. Greater assistance for this Court is provided by the 'Summary of the Annual Report of the Activities of the Seimas Ombudsmen's Office of the Republic of Lithuania in 2010' **[File D2/tab 18]**. The report states:

> "In 2010, a particularly large number of decisions (865) were made regarding the complaints against the actions of officers of correctional institutions subordinate to the Prisons Department. This number exceeds the quality of decisions (403) passed in 2009 by more than twofold. This increase was caused by the mass applications (by 65 persons) received from Pravieniškes-3 Correction Home, in which the convicts expressed their dissatisfaction with the hygiene of residential and general purpose premises, the hairdresser's shop, auxiliary premises, and rooms for long-term visits as well as non-compliance with the hygiene requirements. The investigation confirmed that the complaints regarding the non-compliance with the hygiene standards were justified; therefore the total number of such applications is recognised as justified grew by more than five-fold." **[File D2/tab 18/pages 695-696]**

61. Later on, the report states:

> "Last year visits were paid to Pravieniškes-3 Correction Home, the Šiauliai Remand Prison, Lukiskes Remand Prison, and Hospital of Improvement Institutions.
>
> To sum up information collected during the visits paid to the closed detention institutions, it must be stated that the problems related to the detention conditions, provision of catering and medical service are still very sore points." **[File D2/tab 18/page 698]**

62. Nonetheless, this aspect of the 2010 report is lacking in particularity in relation to 'detention conditions', and it fails to differentiate between the remand prisons (where the consensus has been at all material times that conditions have been the worst) and Pravieniškes-3 Correction Home.

63. Finally, reference should be made to the 2012 Seimas Ombudsmen's Report **[File D2/tab 20]**. A number of points emerge. First:

> "It is noteworthy that, at the end of 2012, the delegation of [CPT] completed its periodic review in Lithuania, and the Head of the delegation James McManus submitted to Lithuania their urgent comments and request to carry out an independent investigation in the Alytus Correction Facility. At the request of the Ministry of Justice of the Republic of Lithuania, the Seimas Ombudsmen's Office carried out an independent investigation at the Alytus Correction Facility related to ensuring a safe and secure environment for convicted persons and the use of special measures."

We were told that the report will be available in early 2014, but were not asked to adjourn this hearing pending its advent. Mr Josse criticised the Senior District Judge's observation that he was *'simply unable, from this piece of information, to draw a conclusion that any defendant held at this Correction Facility is at risk of inhuman or degrading treatment'* **[File A/tab 10/page 130]**. Although it is possible to draw the inference that some specific concern or cluster of concerns may have led to CPT's request for this investigation, the available materials provide no clue as to their nature or seriousness. It follows that the conclusion reached by the Senior District Judge cannot be faulted.

64. Secondly, the Seimas Ombudsmen's Report for 2012 suggested that human rights violations occurred much more often in mental and social care institutions than in prisons. Thirdly, it was the Ombudsmen's view that *'the largest problems of imprisonment institutions are non-compliance with the residential space standards and inadequate hygiene conditions'* **[File D2/tab 20/page 740]**. Finally:

> "Due account should be taken of the fact that this problem is not homogeneous. On the one hand, there is a need to build new imprisonment institutions or renovate the existing ones. On the other hand, the question regarding the current policy on the imposition of detention and punishment applicable to Lithuania must be raised. Recently, the number of detained and

> convicted persons has been rapidly growing in Lithuania and has reached almost 10,000. Without changing the attitude towards the policy on the imposition of detention and punishment, tens of new imprisonment institutions may be built but sooner or later all of them will be overcrowded again. Therefore, an integrated solution to this problem should be found." **[File D2/tab 20/page 741]**

65. The Seimas Ombudsmen also stated that both the Strasbourg Court and Lithuanian domestic courts had found human rights violations in custody units and imprisonment institutions. I will be addressing the conditions in police detention units in due course, but as to prisons no authority was drawn to this Court's attention which supported the Ombudsmen's statement. Plainly, there may well be domestic decisions which are not readily available outside Lithuania, but as for Strasbourg the only authority in the bundles which touches on prison conditions is Savenkovas v Lithuania (Application No 871/02) where the ECtHR upheld Article 3 violations in relation to Lukiskes Remand Prison but did not uphold them in relation to Rasų Prison (see paragraphs 83-84).

66. Professor Rod Morgan's written evidence to the Westminster Magistrates' Court said very little about conditions in prisons, although he is recorded as having accepted under cross examination that *'conditions for convicted prisoners are very different from those for remand prisoners'* **[File A/tab 10/page 118]**. Ms Botryiene did not make the same concession, but her evidence was otherwise to a similar effect.

67. The Senior District Judge rejected the various case-specific points which were advanced before him, and his overall conclusion about prison conditions was as follows:

> "**Systemic Problems**
>
> The defence relied on evidence showing that the problems from overcrowding are clear. There is a recurrent theme in the Seimas Ombudsmen's summaries of underfunding and justified complaints by prisoners. Underfunding itself has an impact on staff numbers and therefore on the risk of inter-prisoner violence.
>
> It is true that the ombudsman reports consistent criticism in this way. The professor refers to a significant risk of vulnerability of inter-prisoner violence. This is an ongoing pervasive feature of prison life in Lithuania.
>
> It would be wrong to be complacent about these risks. The risk of inter-prisoner violence has been considered many times, in Lithuania and elsewhere. However this court has confidence, as have other courts over the years, that the Lithuanian authorities will provide reasonable protection from any risk. There is simply no sufficient cogent evidence to rebut the presumption."

Police Detention

68. CPT's reports dating from the first half of the previous decade provide clear evidence of serious overcrowding, very poor hygiene, deplorable toilet and washing facilities, and the unlawful use of force by police officers. Mr Josse drew attention to the Seimas Ombudsmen's Report, 2005 **[File D2/tab 12]** where it was recognised that grave violations of human rights had been occurring, including holding detainees in 'appalling conditions', in order to extract evidence and/or compel confessions **[File D2/tab 12/page 500]**.

69. In 2006 the Seimas Ombudsmen reported as follows:

> "One of the sore points in the police system for a number of years has been the poor condition of detention establishments of police commissariats. Countrywide, there are a total of 46 detention establishments in police commissariats. Of these only 10 establishments are in good condition. The remaining detention establishments do not meet the requirements of legal acts: the sanitary conditions of cells are poor, the norm of 5 square metres per person is violated, the procedure for the distribution of people to cells is not observed, individuals' right to a walk and use of a shower is violated and the sufficient healthcare of people kept in detention establishments and their provision with recreational and hygienic items are not ensured. In most detention establishments of police commissariats, there are no yards where a detainee could go for a walk, there are no interrogation or meeting premises or medical stations. … A portion of detention establishments of police commissariats should not be used since the detention conditions in these establishments could be identified as inhuman and degrading the human dignity. There are many detainees placed in detention centres of police commissariats and quite a number of police officers are working there. This problem may therefore cause violations of human rights of many people. Thus, the situation demands particular attention." **[File D2/tab 12/pages 533-534]**

70. In 2007 the Seimas Ombudsmen reported *'ongoing improvement, if not rapid enough'* **[File D2/tab 14/page 588]**. There had been a significant reduction in complaints. That said, some detention establishments fell well below minimum standards, and:

> "Although the Seimas Ombudsman has been aware of a very bad condition of detention establishments of the country's police commissariats for a long time and special attention has been paid to this problem for a number of years, it must be stated that the situation is changing very slowly and that all institutions must make more active efforts in this area. It is worth mentioning that there are a few detention establishments which meet the requirements set in the legal acts after the reconstruction or major repairs; however, it should be

> emphasised that this process is not rapid enough." **[File D2/tab 12/page 588]**

71. The CPT delegation to Lithuania in April 2008 visited 12 police stations with detention facilities **[File D1/tab 5/page 260]**. The CPT report published in 2009 criticised the practice of holding remand prisoners in police stations **[File D1/tab 5/page 263]** and noted instances of ill-treatment of detainees by police officers. As for the conditions of detention, CPT commended Kaunas City Police HQ and the police detention centres at Klaipeda and Panevežys **[File D1/tab 5/page 269]**. On the other hand, material conditions as Jonava, Rokiškis, Kupiškis, Šiauliai and Trakai *'displayed a number of major shortcomings and could in some cases be considered inhuman and degrading'* **[File D1/tab 5/page 270]**. The CPT delegation was informed by the Lithuanian authorities that the detention facilities at Jonava, Kupiškis and Trakai would be taken out of service, and that renovation works would be started at Rokiškis Regional Police department.

72. In September 2009 the Lithuanian Government accepted CPT's strictures, and indicated that a process of reform was underway. It had been decided to reduce the number of police detention centres and to give priority to the renovation of strategic police detention centres. Overall:

> "The process of liquidation of police detention centres that do not meet the established requirements is underway. Seven police detention centres terminated their activities at the start of 2008, with three more police detention centres planned to be closed in 2010. In addition, the Police Department has drafted a Programme for Optimisation of the Activities of Police Detention Centres, which provides for the reduction of the number of police detention centres to 27 and development of a network of efficient police detention centres meeting the abovementioned requirements." **[File D1/tab 6/page 332]**

73. The CPT delegation returned to Lithuania in June 2010 and reported in May 2011 **[File D1/tab 7]**. CPT's initial observation was that there had been a 'positive trend' with regard to the way in which detainees were treated by the police in Lithuania. On the other hand, very little progress had been made regarding safeguards against police ill-treatment and conditions of detention in police establishments **[File D1/tab 7/page 372]**. As for the latter, Kaunas City Police detention centre 'remained of a very good standard'. The renovated wing of Klaipeda City Police detention centre was adequate, but conditions in the non-renovated wing were very poor. As for Vilnius City Police Detention Centre, the cells were generally in a poor state of repair and hygiene, and four particular cells were so bad that CPT recommended that they be taken out of use altogether. Further, CPT noted that remand prisoners and those held in administrative detention (this second category is not relevant to these Appellants) could be incarcerated for prolonged periods, *'sometimes for several weeks, and on occasion even months'* **[File D1/tab 7/page 378]**. Finally, and this is a matter on which the Respondents placed particular reliance:

> "In their letter of 10 September 2010 the Lithuanian authorities indicated that a police establishment optimisation programme for 2009-2015 had been adopted. The aim was to reduce the

> number of police detention centres in Lithuania to 27 by 2015 and to ensure that all the centres offered satisfactory conditions. In this context, it was planned to renovate wing 1 at Klapeida City Police Detention Centre and to build a new police detention centre in Vilnius. It was not possible to carry out works in the current detention centre in Vilnius, since the building was included in 'the list of the state's protected projects'." **[File D1/tab 7/page 379]**

74. The Seimas Ombudsmen's Report for 2011 was particularly critical of conditions at the Vilnius County Chief Police Commissariat. It was pointed out that conditions were such as to engender probable violations of Article 3 of the Convention **[File D2/tab 19/pages 724-725]**.

75. The Seimas Ombudsmen's Report for 2012 was considerably less excoriating:

> "… after the Police department under the Ministry of Interior of the Republic of Lithuania had taken decisive action to resolve these problems (the reduction of custody units, renovation of some custody units, and construction of new custody units), the situation changed fundamentally, and the Seimas Ombudsman receives much fewer such complaints. It is noteworthy that the aforementioned problem has not been finally resolved as there are still such custody units (for instance, the custody unit of the Vilnius County Chief Police Commissariat, etc.) where the detention conditions are deemed to be inhuman and are equivalent to torture. Therefore it is necessary to continue the works in this field." **[File D2/tab 20/page 745]**

76. Professor Morgan's evidence to the Westminster Magistrates' Court was based primarily on his analysis and understanding of the public domain materials, the highlights of which I have provided. He confirmed from his own observations that conditions at Kaunas City Police detention centre were adequate.

77. In Kasperovičius v Lithuania (Application No 54872/08) the ECtHR found a violation of Article 3 in relation to seven days' detention at the Anykščiai Facility in October 2006. The Applicant complained that he had been held in appalling cellular confinement. There were no toilet facilities in the cell, so he had to use a bucket or plastic bottle, and the smell was so pungent that he was unable to eat. He suffered from headaches and sore eyes. In the ECtHR's assessment:

> "42 … The Court also has had regard to the CPT reports to the effect that the situation in a substantial number of police detention facilities, especially in smaller towns, was 'totally unacceptable', and in some cases 'could be considered inhuman and degrading'.
>
> 43. In the light of the above considerations, the Court is not convinced by the Government's submission that these conditions did not affect the applicant in a manner incompatible with Article 3. On the contrary, the Court is of the view that the

> prison conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of debasing him. In sum, the Court considers that the conditions of the applicant's detention in the Anykščiai Police Department Facility amounted to degrading treatment within the meaning of Article 3 of the Convention."

Thus, contrary to the position taken by the Prosecutor General's Office in correspondence, it is clear that even relatively short periods of detention may constitute violations of the Convention. Clearly, this must be assessed on a case-by-case basis having regard to the quality of the conditions, the length of time they are found to endure, and their subjective impact on the detainee.

78. The Senior District Judge was taken to all this material. He did not find that there was a real risk of Article 3 violations. He pointed out that Messrs Lapinskas and Zideckas would probably be held at Kaunas, where conditions were satisfactory, and that there was an 'obvious possibility' that Mr Petronis would be held at Alytus police station, where in effect there was a paucity of evidence regarding detention conditions **[File A/tab 10/page 126]**. As the Senior District Judge correctly observed, Alytus Police station was not visited by the CPT delegation in 2010. In his Reply Mr Josse drew attention to extracts from the CPT report promulgated in 2006 **[File D1/tab 3, pages 149 and 158]** which addressed conditions in Alytus, but in my view these fell a long way short of establishing breaches of Article 3. The District Judge also came to the conclusion that the available evidence demonstrated a trend of improving conditions such there was not a real risk of inhuman or degrading treatment wherever the accused were held in Lithuania **[File A/tab 10/page 127-128]**.

79. Having reviewed the available evidence at some length, I now turn to address the two ways in which Mr Josse for the Appellants advances his clients' cases in this Court.

Abuse of Process

80. It is common ground between the parties that this Court possesses a limited abuse of process jurisdiction which is to be implied in the light of the statutory scheme: see Laws LJ in R(Bermingham and others) v Director of the Serious Fraud Office [2007] QB 727. Courts have characterised the abusive conduct in slightly different ways, although for present purposes these variations in judicial expression do not matter. The paradigm (Mr Alun Jones submits the sole) manifestation of such conduct is bad faith: where a requesting state seeks extradition knowing that it has no real case and/or for a collateral motive, namely to oppress or unfairly prejudice a defendant. In Popa v Czech Republic [2011] EWHC 329 (Admin), this Court spoke in terms of the prosecutor or requesting state *'manipulating or using the procedures of the Court'* (see paragraph 18).

81. In Symeou v Public Prosecutor's Office, Patras, Greece [2009] 1 WLR 2384, this Court held, per Ouseley J:

> "In our judgment, the reason why these two strands to the abuse jurisdiction cannot succeed is this. The focus of this implied

> jurisdiction is the abuse of the requested state's duty to extradite those who are properly requested, and who are unable to raise any of the statutory bars to extradition. The residual abuse jurisdiction identified in Bermingham and the Tollman case [2007] 1 WLR 1157 concerns abuse of the extradition process by the prosecuting authority. We emphasise those latter two words. That is the language of those two cases. It is the good faith of the requesting authorities which is at issue because it is their request coupled with their perverted intent and purpose which constitutes the abuse. If the authorities of the requesting state seek the extradition of someone for a collateral purpose, or when they know that the trial cannot succeed, they abuse the extradition processes of the requesting state." (paragraph 33).

82. Mr Josse's submissions under the abuse of process umbrella fell under two sub-headings. First, he submitted that the Lithuanian authorities had misrepresented the position to the Senior District Judge in July/August 2013, because what was put forward as unqualified assurances were in reality heavily circumscribed. Secondly, and as a free-standing point, Mr Josse argued that the assurances could not safely be relied on.

83. In support of his first group of submissions, Mr Josse contended that events occurring after 9th August 2013 conclusively demonstrated that the assurances were not as they appeared. A number of individuals were held at Lukiskes albeit on a temporary basis: the assurances had thus been broken. There were a range of practical problems which the Lithuanians always knew about but were not revealed to the Senior District Judge and which were always likely to conspire in deviations from what had been promised. These are apparent from the review of the underlying evidence which I have already undertaken, but Mr Josse placed particular emphasis on the following matters:

(i) the assurances were to be kept secret from the majority of domestic prosecutors.

(ii) in their initial implementation, the assurances did not apply to consent cases (e.g. Mr Misaniukas).

(iii) equally, in their initial implementation the assurances did not apply to those who did not resist extradition on grounds of poor conditions.

(iv) successful implementation would depend on the UK authorities providing timely information as to whether the extradited person resisted extradition and the grounds for his doing so.

(v) the assurances were not retrospective.

(vi) individual detainees could opt out.

84. Mr Josse was deeply critical of Mr Stripeika's letter dated 21st November 2013 **[File B/tab 20]** and submitted that it represented a *volte face*. Not merely did the letter state that the Ministry of Justice had no jurisdiction over police detention centres, pre-trial investigation officers, prosecutors and the courts, the correct interpretation to be

placed upon it was that there was nothing to prevent detainees being transferred to places other than Kaunas Remand prison pursuant to requests made by competent officers and the courts.

85. Overall on this first group of submissions, Mr Josse argued that the Senior District Judge had been 'terribly let down', and that this Court should act to give legal recognition to that fact.

86. Mr Josse's second group of submissions were grounded on paragraph 189 of the decision of the ECtHR in Othman v UK [2012] 55 EHRR 1. Having regard to a number of listed factors, the issue was simply this: could the assurances be relied on? As for the specific factors:

(i) *'whether the assurances have been disclosed to the Court'*. Mr Josse accepted that they had been.

(ii) *'whether the assurances are specific or are general and vague'*. Mr Josse submitted that they were imprecise, and applied to a large and undifferentiated cohort.

(iii) *'who has given the assurances and whether that person can bind the receiving state'*. Mr Josse submitted that Mr Stripieka could not bind the Republic of Lithuania and in any event could not bind any entity or individual outside the aegis of the Ministry of Justice.

(iv) *'... whether local authorities can be expected to abide by them'*. This raises the same point as item (iii), at least in the context of Mr Stripieka's letter dated 21st November 2013.

(v) *'whether the assurances concern treatment which is legal or illegal in the receiving state'*. Mr Josse submitted that it would be illegal to hold detainees outside Kaunas Remand Centre.

(vi) *'whether they have been given by a Contracting State'*. They were.

(vii) *'the length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances'*. Lithuania has been a member of the Council of Europe since 1993. Beyond the material I have already examined, Mr Josse did not place reliance on other examples of non-compliance.

(viii) *'whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers'*. Mr Josse accepted that his clients would have lawyers in Lithuania.

(ix) *'whether there is an effective system of protection against torture in the receiving state, including whether it is willing to co-operate with international monitoring mechanisms (including human rights NGOs) and whether it is willing to investigate allegations of torture and to punish those responsible'*. Mr Josse accepted that Lithuania allowed visits by CPT delegations. The

effectiveness of the regime within Lithuania went separately to the heart of the Appellants' case under Article 3.

(x) *'whether the applicant has been previously ill-treated in the receiving state'*. Mr Josse advanced no submissions under this heading.

(xi) *'whether the reliability of the assurances has been examined in the domestic courts of the receiving state'*. Mr Josse said that his team was examining that issue.

87. In my judgment, the Appellants have failed to persuade this Court by a considerable margin that the relevant Lithuanian authorities have been guilty of conduct indicative of or approximating to bad faith, and have therefore abused the process of extradition.

88. Mr Krušna's letter dated 17th June 2013 **[File B/tab 11]** clearly stated that pre-trial investigation officers, prosecutors and the courts may order persons to be transferred into police custody for the purposes of pre-trial investigation or court hearings. Accordingly, Mr Stripieka's letter dated 21st November 2013 **[File B/tab 20]** did not represent a *volte face*; it merely reiterated the position.

89. What the pre-August 2013 correspondence did not make crystal-clear was that the Ministry of Justice was not responsible for pre-trial investigation officers, prosecutors and the courts, and that it might well be difficult to prevent those individuals taking steps which would culminate in detainees being held at other remand prisons during the investigation process. There were also a congeries of practical problems, set out under paragraph 83 above, which I would agree are well-founded on the available evidence. However, none of this comes close to establishing that the Lithuanian authorities have acted in bad faith. Rather, this material betokens a failure to be explicit about matters which were obvious to the writers of the letters but far from obvious to those not deeply acquainted with Lithuanian legal processes, and a failure to foresee and to anticipate the range of practical issues which could well arise. But there is insufficient material to draw an inference of bad faith (as opposed to muddle, confusion, and lack of planning) in relation to which the Appellants must face a high hurdle of persuasion. The tone and content of the post-August correspondence betokens a keen willingness to assist and to iron out the obvious teething problems which arose, rather than a sedulous attempt to mislead and to cover up.

90. Mr Josse's heavy reliance on Mr Stripeika's letter dated 21st November 2013 is understandable, but Mr Alun Jones has persuaded me that it establishes the opposite of what the Appellants seek to prove. The letter pinpointed the practical difficulty, namely that those outside the bailiwick of the Ministry of Justice could take steps which would result in persons being held on a temporary basis outside Kaunas, and identified a way forward for addressing this. As the subsequent correspondence shows, the Prosecutor General's Office has taken firm steps to instruct all individuals under its control not to send detainees to Lukiskes or Šiauliai, and those institutions have been ordered not to accept detainees subject to the assurances. As has already been observed, there is no evidence of any recent breach of the assurances in the light of these actions.

91. Plainly, these considerations also seep into Mr Josse's second group of submissions – the assurances are unreliable – but at this stage I record my conclusion that the Appellants must fail on their bad faith argument.

92. As for the reliability of the assurances, my starting point is to consider the relevance of the submission that they may not be legally effective in Lithuania. The evidence bearing on this point is far from satisfactory but I see the force of Mr Krušna's view **[File B/tab 12]** that there is no reason why the Vice-Minister of Justice could not bind his Ministry. On the other hand, there is evidence to the contrary effect, and no evidence from the Ministry of Justice either way. I would prefer to decide this issue on the basis indicated by Laws LJ in paragraph 56 of his judgment in Aswat v Government of the US [20006] EWHC 2927 (Admin), namely whether in all the circumstances the assurances may be regarded as '*in fact effective to refute, for the purposes of the 2003 Act, the claims of potential violation of Convention rights and associated bars to extradition'*.

93. The answer to this question depends on assessing all the considerations identified in paragraph 189 of Othman about which Mr Josse made detailed submissions. The upshot is that I reject the Appellants' full scale assault on the reliability of these assurances. I draw the inference that initial problems of practical application have been successfully addressed. I would certainly draw the inference that the Lithuanian authorities have taken, and are taking, the issue very seriously indeed and that they are extremely keen to batten down the hatches and avoid any possibility of further embarrassment and the charge of administrative failure. It is clear that, following his cross examination before District Judge Zani on 23rd October 2013, Mr Krušna returned to Lithuania with the stark message that the situation had to improve. This was no doubt the genesis of the high-level meeting which took place on 31st October and the intervention of the Prosecutor General on that very day.

94. It is of course recognised that the assurances do not cover, in the sense that they do not prevent, temporary incarceration in police stations for the purposes of pre-trial investigation. As has already been pointed out, that has always been the position. A separate issue arises of whether temporary police detention exposes the three accused cases to a real risk of violation of their Article 3 rights.

95. For all these reasons, I do not conclude that the assurances are unreliable and/or could not properly be relied on by the Respondents in this Court. The Appellants' case based on the assurances is, therefore, rejected.

Article 3

96. Subject to three matters, none of which is ultimately determinative in this case, the law relating to Article 3 and extradition is clear-cut and well-established. The test is that laid down by the House of Lords in R(Ullah) v Special Adjudicator [2004] 2 AC 323 (this was an asylum case but the principle is the same), namely:

> "It is necessary to show strong grounds for believing that the person, if returned, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment."

97. The first of the three areas of possible doubt concern the absolute nature of the threshold. The House of Lords in R(Wellington) v SSHD [2009] 2 WLR 48 applied what might be described as a relativist test, holding that the desirability of extradition is a factor to be taken into account. The ECtHR in Harkin & Edwards v UK [2012] 55 EHRR 19 repudiated that approach, holding that the test could not vary according to the context. Although I see the force and logic underlying the ECtHR's reasoning, this Court is bound by the House of Lords: see Richards v Government of Ghana [2013] EWHC 1254 (Admin).

98. Secondly, the courts have on a number of occasions referred to a 'presumption' that the requesting state is able to, and will, fulfil its obligations under the Convention. Perhaps the better view of expressing the matter is that the Appellants face the legal burden of proving that the requesting state would not fulfil its obligations under the Convention, and that the threshold is a relatively high one ('strong grounds for believing').

99. Thirdly, reference was made by the parties to the following dictum of Mitting J in paragraph 15 of his judgment in Tworkowski v Judicial Authority of Poland [2011] EWHC 1502 (Admin):

> "… [I]t seems to me that the circumstances in which an applicant can satisfy a District Judge that, if extradited, his Art rights [sic] would be breached in the requesting state – if that state is a category 1 Convention state – are likely to be few and far between and certainly require a good deal more than the routine deployment of the decision of the Strasbourg Court … or the reports of individual experts analysing and criticising the prison conditions in the requesting state. Something approaching the sort of international consensus established in MSS v Belgium and Greece is likely to be required."

100. In paragraph 160 of its judgment in MSS v Greece & Belgium [2011] 53 EHRR 2 the Grand Chamber listed a range of reports from organisations testifying to conditions for asylum seekers in Greece. These included CPT, Amnesty International, UNHCR, ECRE, NOAS, Human Rights Watch, the General Council of Refugees, and Council of Europe Commissioner for Human Rights. Mr Josse drew our attention to paragraphs 6 and 7 of Krolik v Several Judicial Authorities of Poland [2012] EWHC 2357 (Admin) which is to similar effect. So, in MSS there was an impressive corpus of convergent evidence from a range of international bodies whose respect and calibre could not be seriously questioned.

101. Mr Josse did not shrink from submitting that the 'international consensus' test was met. He relied on the CPT reports, the expert evidence of a world authority in this field, the Seimas Ombudsmen's reports, and the ECtHR cases to which I have already referred.

102. My starting point is that my conclusion on the first issue, namely the reliability of the assurances, means that there is no risk that any of the Appellants might be returned to Lukiskes or Šiauliai remand prisons. It follows that the current inquiry must be limited to the conviction prisons and to the police detention centres.

103. In my judgment, my review of the evidence bearing on the conviction prisons establishes that the Appellants have fallen a long way short of proving that they face a real risk of Article 3 violations if incarcerated in any such prison in Lithuania. Even taking the CPT reports and the reports from the Seimas Ombudsmen at their highest, the available evidence does not trigger substantial concerns of inhuman or degrading treatment. It must also be reiterated that Professor Morgan drew a clear distinction in his oral evidence between conviction prisons and remand prisons, and that no Strasbourg case was drawn to our attention upholding Article 3 violations in such institutions. I conclude that standards in Lithuanian conviction prisons are not unacceptably low.

104. This leaves the issue of detention conditions in police stations, where the evidence is less clear-cut. Insofar as the three accusation cases are concerned, the evidence shows that Messrs Lapinskas and Zideckas would be detained, if pre-trial investigations were required, within the district of Kaunas and very likely at Kaunas City Police Detention Centre, whereas for Mr Petronis the options are the district of Alytus and Alytus Police Detention Centre (or, subject to the point made below, Alytus Police Station). As for Kaunas, conditions are good (see paragraph 27 above). As for Alytus, there is a paucity of recent evidence and a degree of uncertainty. The CPT report for 2004 refers to 'Alytus Police Detention Centre' and to 'Altyus Police Station' **[File D1/tab 3/page 144]**, but it is unclear whether the detention facilities are within the police station or entirely separate from it, or whether there are in effect one or two detention areas. There is no recent material to which Mr Josse was able to draw our attention.

105. On my understanding of Mr Alun Jones' submissions, the scope of the current inquiry should be confined to Kaunas and Alytus, and this was the approach taken by the Senior District Judge. Mr Josse invited the Court to adopt a broader view, and as has been made clear both parties advanced submissions directed to conditions within police stations throughout Lithuania.

106. In my judgment it is sufficient for the purposes of these appeals to find that Messrs Lapinskas, Zideckas and Petronis do not face a real risk of Article 3 violations in the event of return to the districts of Kaunas and Alytus. There is no evidence to show that they might be returned elsewhere.

107. But, in the light of Mr Josse's submissions it is also appropriate to consider the matter more broadly.

108. If the current investigation extended back to a period ending in approximately 2008, or possibly slightly more recently, there would have been cause for concern. The evidence does not present a consistent picture, but anyone facing the prospect of incarceration within Lithuanian police stations during that period could arguably demonstrate a real risk of Article 3 ill-treatment. No court, still less the ECtHR, has found generic breaches of the Convention on the basis that *all* police stations in Lithuania are not Article 3 compliant.

109. In any event, the position has moved on since the end of the period I have identified. Mr Alun Jones submitted that Lithuania has been making progress in updating and renovating its police detention facilities, and in my judgment the available evidence clearly bears him out. The CPT acknowledged the 'police establishment optimisation programme for 2009-2015' **[File D1/tab 7/page 379]**. The most recent CPT report

(dated May 2011, but addressing inspections carried out the previous year) scarcely provides a completely clean bill of health but it recognises that improvements have occurred. And the Siemas Ombudsmen's report for 2012 is reasonably sanguine, albeit not universally so.

110. The Appellants have recognised the high threshold that has to be met before this Court is able to find a real risk that their Article 3 rights would be violated on return to Lithuania and incarceration, admittedly for relatively short periods, in inhuman or degrading conditions of police detention. In my judgment, approaching this issue on the generic basis indicated at paragraph 107 above, the Appellants have fallen short of discharging that burden. Accordingly, this aspect of their case must also be rejected.

111. Overall, I find against the Appellants on their case that their Article 3 rights would be violated on return to Lithuania.

112. This leaves the individual, case-specific appeals of Mr Aleksynas and Mr Danielius.

The Appeal of Mr Aleksynas

113. Mr Aleksynas was only 14 years of age when the assault in respect of which he is being extradited was committed in 2008. His suspended sentence was activated on 14th February 2011 and he came to the UK the following month. He claims that he did not know the reasons for the activation, although he accepts that he knew that it had been; he was afraid, and that is why he came here. Ms Mary Westcott invited the Court to hold that her client was not in breach of the conditions attached to his original sentence within the governing 12 month period, but I am unable to reach that conclusion. There is simply no basis for holding that the material forming part of the EAW should be disregarded.

114. Ms Westcott also drew our attention to a number of first instance decisions where favourable findings were reached on proportionality questions. However, these cases did not avail her client; each turned on its own facts.

115. Somewhat more promisingly, Ms Westcott forcefully submitted that it would be disproportionate to return her client to Lithuania now. She relied on the delays which have accrued, her client's youth, the seriousness of the offence (the *mens rea* was recklessness, not intention), the fact that he has been here for three years and has a clean record in the UK, the interference with his Article 8 rights (his brother and cousin are here), the fact that he would probably be removed to an adult prison in Lithuania, and the fact that he has been on an electronic tag for over a year, and should therefore benefit from the early release provisions in Lithuania.

116. The Lithuanian early release provisions are discretionary and suggest that prisoners become eligible after having served in the region of one half of their sentence **[File D2/tab 23/page 827]**. However, it is not clear how the Lithuanian authorities would regard, if at all, Mr Aleksynas' electronic tag and accompanying curfew.

117. The Senior District Judge approached this case on the basis that Mr Aleksynas had committed a serious offence, that he left Lithuania before finding out why the

suspended sentence had been implemented, that the delay was of his own making, and that other members of his family remain in Lithuania. In any event, there is a clear public interest favouring extradition.

118. In my judgment, Mr Aleksynas is able to point to a period of relevant delay by the Lithuanian authorities, namely from 15th June 2010 (at the latest – this was the date on which the 12 month conditions expired) and 14th February 2011. Aside from that period, the delay is the fault of the Appellant. But looking at the matter more widely in the light of Ms Westcott's submissions, I cannot agree that it would be disproportionate to extradite Mr Aleksynas to Lithuania. This was a serious offence, equivalent to section 20 of the 1861 Act in this jurisdiction, and all the factors prayed in aid by Ms Westcott do not override the clear public interest in favour of extradition.

The Appeal of Mr Danielius

119. The two points succinctly taken by Mr Jesurum for this Appellant are that the offence was committed in 2003, and that he has less than 2 months left to serve of the sentence of imprisonment which was imposed. The time left to be served according to the European Arrest Warrant was 1 year, 2 months and 26 days (see paragraph 9 above), but on this Appellant's reckoning the time spent on remand in custody in this jurisdiction (as at the first day of the hearing, 1 year and 29 days) falls to be taken into account.

120. I cannot accept that these matters, taken individually or cumulatively, come close to rendering it disproportionate to extradite Mr Danielius to Lithuania. Notwithstanding the obvious delay, there is a clear public interest in making an order that will have the effect that he will serve the remainder of his sentence.

Conclusion

121. Save for the cases of Mr Podrezas and Mr Gudauskas, in respect of which Orders have already been made, all of these appeals are dismissed.

LORD JUSTICE MOSES:

122. I agree, for the reasons given by Jay J.