Neutral Citation Number: [2021] EWHC 1537 (Admin)

Case No: CO/4555/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/06/2021

**Before**:

**MR JUSTICE CHAMBERLAIN**

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**Between:**

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| **EIMANTAS PEIKAUSKAS** | **Appellant** |
| **- and –** | |
| **PROSECUTOR GENERALS OFFICE (LITHUANIA)** | **Respondent** |

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**MARY WESTCOTT** (instructed by **Lansbury Worthington Solicitors**) for the **Appellant**
**ALEXANDER dos SANTOS** (instructed by the **Crown Prosecution Service**)
for the **Respondent**

Hearing dates: 19 May 2021

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# Approved Judgment

**Mr Justice Chamberlain:**

## Introduction

1 The appellant, Eimantus Peikauskas, is sought by the Prosecutor General's Office, Lithuania, pursuant to a European Arrest Warrant issued on 21 January 2018 and certified on 9 February 2018. The warrant seeks his surrender to stand trial for two offences of conspiracy to defraud to the value of EUR 2,000. The framework list is ticked for swindling. Each offence attracts a custodial sentence of up to 3 years' imprisonment.

2 After a hearing at Westminster Magistrates' Court, District Judge Hamilton ordered the appellant's extradition for reasons contained in a judgment handed down on 2 December 2020. The appellant appealed pursuant to s. 26 of the Extradition Act 2003 ("the 2003 Act"). This is a renewed application for permission to appeal, permission having been refused on the papers by Lane J on 22 April 2021.

3 District Judge Hamilton noted in his judgment that the appellant had raised an "exceptionally large" number of objections to extradition, some of which he described as very weak. Only three grounds are now pursued. All rely on s. 21A of the 2003 Act. It is said that the judge erred in concluding that extradition would be compatible with the appellant's Article 3 rights in the light of the prison conditions in Lithuania (ground 1), the appellant's Article 8 rights (ground 2) and that he erred in concluding that extradition would be proportionate (ground 3).

4 I deal with these in reverse order, as that is the order in which they were advanced before me.

## Ground 3

5 As to ground 3 (proportionality), s. 21A(1)(b), read with s. 21A(2) and (3), requires the judge to consider whether the extradition would be disproportionate, taking into account (a) the seriousness of the conduct alleged to constitute the extradition offence, (b) the likely penalty that would be imposed if the appellant was found guilty of the extradition offence and (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of the appellant.

6 The leading case is *Miraszewski v Poland* [2014] EWHC 4261 (Admin), [2015] 1 WLR 3929, where at [31] Pitchford LJ said that the court may, depending on its evaluation of the factors, conclude that extradition would be disproportionate if (i) the conduct is not serious and/or (ii) a custodial penalty is unlikely and/or (iii) less coercive measures to ensure attendance are reasonably available to the requesting state in the circumstances. At [36], it was noted that seriousness was to be judged in the first instance against domestic standards, but taking into account the views of the requesting State, if offered. As to likely sentence, the judge is entitled to draw inferences from the EAW and can draw on domestic sentencing practice.

7 In *Kalinauskas v Prosecutor General's Office, Lithuania* [2020] EWHC 191 (Admin), the appellant was sought for a drugs offence for which the sentencing range in England and Wales was between a low-level community order and 26 weeks' custody. Supperstone J (with whom Irwin LJ agreed) held that, because the appellant had been in custody awaiting extradition, by the time of the appeal he had served in excess of any

sentence that could be imposed on him. Extradition was therefore disproportionate and he was discharged.

8 Mary Westcott, for the appellant, said that the same approach should apply here. The Lithuanian authority had the opportunity to submit material on the likely sentence but had chosen not to do so. In those circumstances, it was appropriate to consider how the appellant would be sentenced in this jurisdiction for the offences for which he is sought. Applying the Sentencing Council's Definitive Guideline for conspiracy to defraud, and assuming that this was a medium culpability offence, the range where the value was under £5,000 was a band B fine to 26 weeks' custody. Even assuming an adjustment to a higher category on the basis that the victim was particularly vulnerable, the range would be between a medium level community order and 1 year's custody. The appellant has been on remand for over 16 months. That was longer than any sentence the Lithuanian court was likely to impose.

9 The difficulty with submissions of this kind is that, if an offender were being sentenced in England and Wales, the court would have available a great deal more information than is normally, or is required to be, included in an EAW. Save in a very clear case, this makes it difficult to say with any confidence whether the requested person has served in excess of any sentence that might be imposed on him in the requesting State.

10 The judge was alive to this difficulty. After setting out the principles to be derived from *Miraszewski*, he noted at [64] that the allegations against the appellant could not be described as "minor": the victims were vulnerable and most likely elderly individuals liable to be taken in by the "fairly elaborate deceptions said to have been practiced"; the offences involved pre-planning and group action; and each of the two alleged offences involved the sum of 2000 Euros. It is true, as Ms Westcott submitted, that the EAW did not say in terms that any of the victims was vulnerable because of age. The judge acknowledged the lack of clarity in this regard at [65] but noted that the description of one of the offences involved one of the defendants being frightened away by the victim's granddaughter. This, the judge said, justified an inference that one of the victims at least was elderly.

11 For my part, I doubt whether it can be said with any confidence on the basis of this snippet of information that this victim was vulnerable because of age. But it is certainly a possibility. The significance of this possibility was identified by the judge at [65]: it might justify moving up a category in the domestic sentencing guideline. Given the lack of clarity as to the circumstances of the offence, I do not think the judge was wrong to say that this is a case which could potentially attract a sentence of up to 2 years' detention, given that – on any view – there were two separate offences, both of which involved pre-planning, group action and sums which were significant. Whether a sentence of that order was realistic would depend on a host of factors which are not clear from the EAW. It is not clear at what stage an offender who received such a sentence could expect to be released in Lithuania; different jurisdictions have different rules and procedures for determining early release.

12 In short, unlike *Miraszewski*, this was not a clear case. There was a *possibility* that, once extradited, the appellant would receive a custodial sentence lower than that which he had already served in the UK. If so, he would – as the judge said – be protected by the provisions of the Framework Decision, which require time served in the UK to be deducted from any sentence. However, it could not be said that the offender was unlikely

to receive *any* custodial sentence. There was also a material possibility that a custodial sentence would be imposed which exceeds the time already served. Because of that possibility, there remained a clear public interest in his extradition to face trial for these offences.

13 In my view, the judge's analysis of these points was careful and nuanced. There was no material error of approach. This was a case whose outcome depended on the view taken by the courts of the requesting State about the circumstances of the offence and the offender. The proper sentence was a matter for them. It could not be said on the basis of the information in the EAW that extradition would be disproportionate.

14 In my judgment, it is not reasonably arguable that the judge erred in relation to the question of proportionality.

## Ground 2

15 Ground 2 is that the judge erred in concluding that extradition would be compatible with Article 8 ECHR. There is a significant overlap between this point and ground 3. For the reasons I have given in respect of ground 3, there is no basis for concluding that the judge erred in his analysis of the proportionality of extradition in light of the likely sentence that could be imposed. The main additional point made by Ms Westcott is that the judge failed to take into account, or give adequate weight to, the delay on the part of the Lithuanian authorities notwithstanding the judge's finding that the appellant is a fugitive.

16 The judge correctly directed himself on the law. He referred at [52] to *Norris v Government of the USA (No. 2)* [2010] UKSC 9, [2010] 2 AC 487, *HH v Italy* [2012] UKSC 25, [2013] 1 AC 338 and *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551. He set out the factors in favour of extradition at [60]. These were: (a) the constant, weighty public interest those convicted of crime should serve their sentences and the UK fulfil its obligations under the EAW scheme; (b) that the UK should not become or be seen as a safe haven for those who are accountable to Judicial Authorities abroad; (c) that the alleged offences are relatively serious; and (d) that the appellant had been found to be a fugitive.

17 The factors against extradition were set out at [61]. These were that: (a) the appellant appeared to have led a settled private life in the UK since the end of 2017 and had been in employment for most of that period; (b) that he had no criminal convictions whilst in the UK; (c) that he had been financially supporting his wife and child (who were resident in Lithuania) though his employment in the UK, although they appear to have been managing without that support since the start of 2020; and that there was a plan for the family to settle long-term in the United Kingdom; and (d) that extradition would likely cause some emotional and psychological harm to the appellant, though there was arguably nothing at all exceptional or unusual about such an impact.

18 Balancing these factors, the judge decided that extradition would be compatible with the appellant's Article 8 rights.

19 In my judgment, it is not reasonably arguable that the failure to mention delay on the part of the Lithuanian authorities vitiated the balancing exercise undertaken by the judge. The offences are said to have been committed in March and September 2016. The EAW was issued in January 2018. Even if this delay had been entirely unexplained, it would not be

at the high end of the spectrum of delays sometimes seen in extradition cases – nor indeed out of the ordinary for criminal proceedings in this jurisdiction. It was not, however, unexplained. The chronology is set out at [6] of the judgment. In respect of the first offence, he was arrested and interviewed in September 2016. He was interviewed again in March and May 2017. A bill of indictment was drawn up on 1 June 2017 and he was summoned to attend a court hearing on 7 September 2017. He attended on that date and again on 2 November 2017. He was given further dates on which he was required to attend, but left for the UK. Against this background, it is difficult to see that any delay prior to the issue of the EAW could properly have been regarded as culpable.

20 Even if one concentrates on the total delay between the offences and the present day, the fact that the appellant was a fugitive meant that it could not attract much weight in the balancing exercise.

21 To my mind, the judge did not err by failing to mention delay as a factor tending against extradition in the circumstances of this case. If he did, the error was immaterial. As Alexander dos Santos submitted for the Lithuanian authority, the Article 8 case was weak. The appellant's family were not in the UK, so extradition would not have the effect of separating them. The public interest factors in favour of extradition clearly outweighed those against. The contrary is not reasonably arguable.

**Ground 1**

22 Under ground 1, the appellant makes two submissions: one generic and one specific. Ms Westcott says that these submissions are inter-related. The generic submission was that the judge erred in relying on the Divisional Court's judgment in *Gerulskis and Zapalskis v Lithuania* [2020] EWHC 1645 (Admin), which accepted an assurance given on 3 April 2020 with respect to conditions in remand prisons. It is said that the position had moved on since the hearing in that case (which was in June 2020) and the judge should have allowed oral expert evidence from Karolis Liutkevicius.

23 The judge relied on *Gerulskis and Zapalskis* for the proposition that the generic assurances given by the Lithuanian authorities in those cases were sufficient. He also relied on the decision of District Judge Goozée in *Civilka, Gecysas and Guzikauskas* of 25 September 2020.

24 The background to the concern about prison conditions in Lithuania is set out in my judgment in *Bernotas v Lithuania* [2021] EWHC 1410 (Admin), at [7]-[15]. I heard that case, and gave judgment in it, since hearing this one. But nothing in the passages referred to is controversial. There is a distinction in Lithuanian prisons between "correction houses", where prisoners serve their sentences, and remand prisons, where they may spend time before conviction. The Divisional Court held in *Jane v Lithuania* [2018] EWHC 1122 (Admin) that the presumption that ECHR contracting States would comply with Article 3 was displaced in respect of two remand prisons, Lukiškės and Šiauliai. In *Jane v Lithuania (No. 2)* [2018] EWHC 2691 (Admin), it held that additional assurances given about the conditions in these remand prisons were satisfactory.

25 *Bartulis v Lithuania* [2019] EWHC 3504 (Admin) considered conditions in correction houses. The Divisional Court held that violence between prisons and by prison officers were being addressed and that the presumption that Article 3 would be complied with was not displaced.

26 In *Gerulskis and Zapalskis*, a new assurance, given after the start of the Covid-19 pandemic, and applicable to all those surrendered under accusation warrants, was held to be satisfactory.

27 Against this background, the judge was in my view entitled to rely on the holding in *Gerulskis and Zapalskis* that there was a generic risk of treatment contrary to Article 3 in Lithuanian prisons, absent any further indication of a change in circumstances since the judgment in that case (in June 2020). The two reports of Mr Liutkevicius relied upon are dated 18 June 2020 (just after the hearing in *Gerulskis and Zapalskis*, but before the judgment in that case) and 2 October 2020. Neither of them provided a basis for doubting the conclusions drawn in *Gerulskis and Zapalskis*.

28 As to the report of 18 June 2020, the concerns about conditions in the remand prisons are largely overtaken by recent assurances: see *Bernotas*, [13]. The concerns about violence in the correction houses where prisoners serve their sentences after conviction appear to arise from information which dated from 2012 (para. 56), 2018 (paras 57-58), 2017 (para. 60), 2016 (para. 61), 2018 (para. 62) and 2019 (para. 63).

29 The report of 2 October 2020 dealt in particular with Šiauliai Remand Prison. But the problems there related to overcrowding rather than violence and the former have been the subject of specific assurances as discussed in *Bernotas*.

30 Having considered Mr Liutkevicius's reports in detail, there was nothing in them which should have caused the judge to depart from the position in *Gerulskis and Zapalskis*.

31 As to the specific concern about violence from prison officers, this was said to arise from the fact that the appellant had been the victim of unlawful violence by the police when arrested; and had successfully pursued proceedings against the police officers responsible. The judge said this:

> "25… I dismiss the validity of this submission for three main reasons. First the submission strikes me as fundamentally illogical in that it appears to be predicated on the notion that there is widespread and uncontrolled corruption within various state agencies in Lithuania, including the police and prison services, resulting in unregulated and unlawful behaviour on the part of, for example, police and prison officers. However the information provided in relation to the assault on Mr Peikauskas and the subsequent action taken against the relevant police officers would appear to indicate that rather than tolerating widespread corruption Lithuania actually has in place robust systems for the detection and prosecution of misbehaviour by agents of the state. Secondly the assertions made on this point were entirely speculative and unsupported by cogent evidence of any real risk of the feared retribution. Thirdly the submissions were effectively another way of attacking the validity of Lithuanian prison assurances and the conditions in Lithuanian prisons since compliance with Article 3 rights would include having in place systems to protect prison inmates from acts of violence at the hands of both state and non-state actors.
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> 26. Mr Peikauskas' proof of evidence contains a further claim that he might be subject to retributive acts by inmates within Kybartai prison who believed

> that a friend of Mr Peikauskas and Mr Peikauskas himself owed them money. This in turn related to the 2 alleged offences which are the subject of the EAW as Mr Peikauskas believes that his friend was trying to obtain the monies concerned to pass on to these people. Mr Peikauskas said that he had never complained to the police about being the victim of any threats nor had such threats been repeated in any form since he came to the UK in 2017. This claim was completely speculative and unsupported by any corroborative evidence. In addition I would repeat the point in the preceding paragraph that the prison assurance from Lithuania relating to compliance with Article 3 rights would include having in place systems to protect prison inmates from acts of violence at the hands of both state and non-state actors."

32 I can discern no error of law or approach in these passages. The judge considered the specific risk relied upon in some detail. He made findings that there was no such risk. These findings are not arguably open to criticism, even when read alongside the evidence of Mr Liutkevicius. I would add that, insofar as the violence feared was from the appellant's co-defendants, the fear would be well-founded only if the co-defendants were still in prison in Lithuania. There is no information to suggest that they are – let alone that they would remain a threat to the appellant at this stage.

## Conclusion

33 For these reasons, I would refuse permission to appeal.