

THE HIGH COURT

Record Number 2006 NO. 73 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
DALIA ONUTE BUSJEVA

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 27th day of March 2007

1. The surrender of the respondent is sought by the judicial authority in Lithuania so that she may face prosecution in respect of 22 offences set forth in the European arrest Warrant issued herein on the 21st July 2005. This warrant was duly endorsed by the High Court for execution on the 11th July 2006, and she was arrested on foot of same, and brought before the High Court, as required, on the 16th August 2006 in order to await the hearing of the present application for her surrender.

2. I am satisfied from the affidavit evidence of the arresting officer, Sgt. Thomas Malone sworn herein that the person who has been arrested and brought before the Court is one and the same person as that in respect of whom this warrant has been issued.

3. As to correspondence of offences, twenty one of the twenty two offences set forth in the warrant are offences of fraud, and as such are offences referred to in Article 2.2 of the Framework Decision and in respect of which double criminality does not need verification. The remaining offence (No. 1 in the warrant) is described therein as negligent accounting in connection with a business. I am satisfied that if the acts alleged to have been committed by the respondent in that regard had been committed in this jurisdiction, an offence under s. 202 of the Companies Act, 1990 would be committed.

4. No issue has been raised in Points of Objection relating to either identity or correspondence.

5. Section 45 of the Act does not apply. I am satisfied also that there is no reason under sections 21A, 22, 23, or 24 of the Act why surrender should not be ordered, and, subject to dealing with the only Point of Objection being now put forward by the respondent, I am satisfied that there is no reason why surrender is prohibited under Part III of the Act or the Framework Decision itself.

6. The Point of Objection put forward by the respondent is that conditions of detention and imprisonment are so sub-standard in Lithuania that to order her surrender to face incarceration there pending her prosecution or imprisonment thereafter, if convicted, would amount to a breach of Article 3 of the European Convention on Human Rights and Fundamental Freedoms in that they are inhuman and degrading. Torture is not put forward as a reason under Article 3 of the Convention.

7. The respondent has sworn an affidavit in which she refers her arrival in this country in August 2002 and to her various residences here thereafter and her employment here. She refers also to the fact that in 2001 in Lithuania she was injured seriously in a car accident, and to the fact that she suffers from depression. She has exhibited some medical evidence in relation to depression here. This illness is not itself said to be a ground relied on for refusal of surrender, but it is put forward by way of general background feeding into the ground alleged to justify refusal, namely the prison conditions in Lithuania which she says pose a significant risk that her human rights will be breached if surrendered.

8. She states that if returned, she will be detained in "Marijampole" which is the town where she resided prior to her arrival in this country. One of the prisons in Lithuania is the Marijampole Correction Centre, and in support of her objection she has exhibited in her affidavit two Reports dated respectively February 2000 and February 2004 compiled for the Council of Europe by the European Committee for the Prevention of Inhuman or Degrading Treatment ("CPT") following two inspections of prisons, including in 2004 only, the Marijampole Correction Centre. The stated purpose of these reports is, *inter alia*, to report findings and make recommendations with a view to preventing abuses of persons in prison or detention in the future. It does not examine cases which may have occurred in the past.

9. There is no need to set out in detail the findings of this report in relation to persons generally in Lithuania. But if one reads the 2000 Report there can be no room for doubt that the inspectors had very many specific criticisms of the treatment of prisoners and the physical conditions in police custody generally in Lithuania and made many recommendations for improvement by way of training of police officers, the prosecution of officers for ill-treatment offences. Equally strong criticisms were levelled at prison staff and the prisons themselves, and recommendations were made for improvements to be made. In relation to police detention centres there are criticisms as to the size of police cells, the lack of adequate light and ventilation, poor furniture and unclean mattresses and blankets. Some overcrowding was also found to exist.

10. Similar criticisms are made in relation to the prisons visited. Without going into these criticisms in detail, there was reported to be widespread overcrowding, unclean mattresses, sheets and blankets, lack of proper hygiene, proper food, exercise and fresh air, as well as ill-treatment. Various prisons were visited in 2002 but for some reason, not the Correction Centre at Marijampole. Many recommendations were made for improvement in these conditions. This may be the result of the authorities not providing this location to the Committee on a list of prisons for the 2000 visit.

11. The Committee carried out a second inspection in February 2004, and in its report there are certain reservations expressed at the commencement of the Report about the level of co-operation received from the authorities and it is stated in para. D6:

"The CPT must stress that, unless genuine efforts are made to improve the situation, it will be obliged to consider having recourse to Article 10(2) of the Convention".

12. That course could result in the Committee making its findings public.

13. The respondent relies on this report and specifically certain passages as appearing in her affidavit in which reference is made to continuing overcrowding in prisons, ill-treatment of inmates, extended periods in police detention in cramped, filthy and sub-standard conditions, and it is notable that 17, 18 and 19 thereof refers specifically to the Marijampole Correction Home, and Marijampole Police Detention Centre, The police detention centre at Marijampole, and that at Kaunas are described therein as "totally unacceptable", and requested that urgent steps be taken to improve them. In relation to the Marijampole Correction Home, there are allegations of ill-treatment noted, including beatings and verbal abuse by staff there, without such matters being made the subject of investigation and prosecution of the perpetrators. It appears from the Reports that police detention centres can be used for detention of persons

for up to 30 consecutive days, and this presumably might include the police detention centre at Marijampole, as opposed to the Correction Home at Marijampole.

14. The 2004 Report notes that some training of staff had been put in place since 2000 by the Lithuanian Ministry of the Interior, and that further training of staff was planned for 2004. A new Code of Criminal Procedure was brought in also in 2002 in which new procedures were put in place in relation to such matters as the right to a lawyer while in custody, the right to make complaint of ill-treatment, supervision by an investigating judge of pre-trial investigation, and so on. Nevertheless the Report reiterates reservations about the rate of progress in relation to the prosecution of officers against whom complaints are made of ill-treatment, and access to medical attention when required.

15. The 2004 Report states that in Lithuania, police detention centres can be used for holding persons for prolonged periods, reaching, on a cumulative basis, several months. Improvement in these locations is deemed to have been little enough, though there was some reduction in overcrowding since 2000, but not sufficient. In the 2004 Report, it is specifically noted at para. 35 that conditions in Kaunas and Marijampole Police Detention Centres are "inhuman and degrading, especially considering that persons were being held under such conditions for prolonged periods". The centres at Alytus and at Vilnius offered what are described as "somewhat better material conditions" (para. 37). Urgent recommendations were made in relation to these facilities.

16. This Report refers to allegations of ill-treatment at Marijampole Correction Home, as well as verbal abuse, inter-prisoner violence, including beatings, sexual assaults, extortion and other abuses, and states that these can "fairly be described as inhuman and degrading" (para.56), leading in two cases in 2003 to suicide. This situation is reported to exist in Kaunas and in Vilnius, though a recent reduction in overcrowding is noted in respect of Kaunas Juvenile Remand Prison and Correction Home.

17. However, I want to draw attention to the fact that this report states that the Marijampole Correction Home is a male-only facility, and accordingly there can be no risk that the respondent in this case will ever be detained there. I am of the view that it is a significant omission in the respondent's affidavit that this fact was not disclosed and that the Court discovered it itself during the course of argument. It seems to be a separate facility to the Police Detention Centre at Marijampole, and Counsel for the respondent has stated that she may well be detained in this facility in respect of which there has been such criticism in the 2004 Report.

18. It is noted in the Report that 41 women are among the prison population in Lukiskes Remand Prison Vilnius, and that there are 18 women held in the Prison Hospital, Vilnius. There are no other facilities in which it is noted that there are women detained. Presumably the Lukiskes Remand Prison in Vilnius is a possible place of detention for the respondent should her detention be ordered at any stage. However, that is not certain. There is no evidence in that regard. But Patrick McCarthy SC for the respondent urges that the Report discloses such a bleak picture of prison conditions generally throughout Lithuania that the Court should regard it as applying to any prison in which the respondent may be detained in the future.

19. There is no doubt that these Reports present a bleak picture and that in places the Report itself describes aspects of the prison regime as inhuman and degrading. The Court has been referred also to a couple of cases brought before the European Court of Human Rights by applicants who suffered ill-treatment in Lithuanian prisons. These cases are *Valisinas v. Lithuania*, 24th July 2001, and *Karelevicius v. Lithuania*, 7th April 2005. Both cases relate to conditions in prison in the late 1990s. The details do not particularly matter in the light of matters to which I shall refer in relation to the Lithuanian Government's Response to the 2004 Report. That Response was made in 2006 and contains some details of measures planned as well as put in place in order to address the deficiencies in the prison conditions in the country which were identified in the two reports already referred to.

20. Robert Barron SC has referred to this Response in order to demonstrate that however bad things may have been when the various facilities were inspected in 2000 and 2004 prior to the accession to membership of the European Union, the Response shows that improvements are being made and have in some respects already been made by the Lithuanian Government. For example, a Code of Ethics for police officers was adopted in 2004, training for police officers was put in place, and a programme of renovation of prisons and police stations were planned for 2003-2007 so that these facilities will meet European Union standards. In addition a new Criminal Procedure Code was enacted ensuring prosecutor control over pre-trial investigations, improving access to lawyers, medical attention, and a complaints mechanism relating to ill-treatment and so on. In 2000 new regulations were put in place in relation to Police Detention Centres which, *inter alia*, cover the conditions under which detainees are held. The Response notes that a programme for the Renovation of Custodial Places and the Humanization of Conditions of Imprisonment has been approved by the Government, which includes the reconstruction of the 13 custody facilities referred to therein. It notes that the new prison at Kaunas has been opened in 2004 causing a reduction of prisoner numbers at Lukiskes Prison, Vilnius. Overcrowding is noted as being addressed by these measures. I do not propose to detail all the measures which are being taken and have already been taken.

21. In order to succeed in her objection, the respondent would have to show a real risk that she would suffer inhuman or degrading treatment or punishment if surrendered. This is clear from cases such as *Soering v. United Kingdom*, 11 EHRR. 439, as well as cases here such as *Attorney General v. Skripakova*, Supreme Court, 24th April 2006. Clear and cogent evidence must be established in this regard. Mere speculation or uncorroborated assertion is insufficient.

22. In the absence of the Lithuanian Government's Response document in 2006, I have to say that the picture emerging from the 2000 Report and the 2004 Report was very bleak indeed, and themselves refer to some of the features of the detention regimes in place as being inhuman and degrading. However those reported conditions were those prevailing several years prior to the accession of Lithuania to the European Union. That accession has many consequences, but one relevant to the present application is that it is to be assumed that certain minimum standards of human rights now exist in that country. I suspect that the reports of 2000 and 2004 were part of the process of 'vetting' which will have taken place in the period leading up to accession.

23. One way or another the Response document is evidence of intent on the part of the Republic of Lithuania to continue to put in place the programme of renovation and overall improvement in the prison regime and buildings. This will take time, but the important matter is that it is under way, and many improvements have already been made.

24. This Court must have regard also to the fact that Lithuania has been designated for the purpose of the European Arrest Warrant Act, 2003. There is a presumption in s. 4A of the Act that the requesting state will comply with its obligations under the Framework Decision. Nevertheless, that alone cannot absolve this Court of the need to examine whether the presumption might have been rebutted in a given case. But there has to be taken into account the fact that the European arrest warrant regime is based on a high level of mutual trust and confidence, as set forth in the Recital to the Framework Decision. The fact that Lithuania joined the European Union after the Framework Decision was adopted does not detract from that level of trust and confidence. It must be paid due regard, while at the same time not excluding, in a truly exceptional circumstance and on foot of clear cogent evidence, a determination that to order surrender would breach constitutional or Convention rights. This is not such a case given the clear expression of intent contained in the Lithuanian Government's Response document, and the progress already noted to be have been

made.

25. The final matter to be mentioned is that I would have thought that it would have been possible for the respondent to be more specific in her affidavit as to which prison facility she, as a woman, is likely to be detained in. Her effort to suggest that she would have been sent to Marijampole was unsatisfactory given that the Marijampole Correction Home is a male-only facility, and I would have thought it highly unlikely, even allowing for the fact that there is evidence that detainees are kept in police detention centres for periods of up to 30 consecutive days, that she would reasonably have expected to be detained in Marijampole Police Detention Centre pending her trial or thereafter, if convicted. There is a heavy onus on a respondent in applications of this kind to establish a sufficient factual basis for resisting surrender. This respondent did not in my view other than in a very general way establish facts in relation to prisons and police detention centres, and this is dealt with by the Response of the Lithuanian Government referred to.

26. In the circumstances, the Court is satisfied that the surrender of the respondent is not prohibited under Part III of the Act or the Framework Decision.

27. I therefore make the order sought under s. 16(1) of the Act.