Neutral Citation [2015] IEHC 455

THE HIGH COURT

[2014 No. 140 EXT]

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

EDUARDAS TAGIJEVAS

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 30th day of June, 2015

1. The surrender of the respondent is sought by Republic of Lithuania ("Lithuania") pursuant to a European Arrest Warrant ("EAW") to serve the remaining 9 months and 29 days of a custodial sentence of 10 months imposed upon him for an offence of theft. The main issue in this case is whether his surrender is prohibited under Article 3 of the European Convention on Human Rights ("ECHR") on the ground that there are substantial grounds for believing that there is a real risk of the respondent being subjected to inhuman and degrading prison conditions in Lithuania on surrender.

A Member State that has given effect to the Framework Decision
2. The surrender provisions of the European Arrest Warrant Act, 2003 as amended ("the Act of 2003") apply to those Member States of the European Union that the Minister for Foreign Affairs has designated as having, under their national law, given effect to the Framework Decision of the 13th June, 2002 on the European arrest warrant and the surrender procedures between Member States ("the Framework Decision"). By the European Arrest Warrant Act 2003 (Designated Member States) (No. 3) Order 2004 (S.I. 206 of 2004), the Minister for Foreign Affairs designated Lithuania (more correctly the Republic of Lithuania) as a Member State for the purposes of the Act of 2003.

Section 16(1) of the Act of 2003
3. Under the provisions of s. 16 (1) of the Act of 2003 as amended, the High Court may make an order directing that the person be surrendered to the issuing state provided that:

a) the High Court is satisfied that the person before it is the person in respect of whom the EAW was issued,

b) the EAW has been endorsed in accordance with s. 13 for execution,

c) the EAW states, where appropriate, the matters required by section 45,

d) The High Court is not required, under sections 21A, 22, 23 or 24 of the Act of 2003 as amended, to refuse surrender,

e) The surrender is not prohibited by Part 3 of the Act of 2003.

Endorsement
4. The EAW issued on the 22nd May, 2014 by the issuing judicial authority of Lithuania. It was endorsed for execution in this jurisdiction on the 15th July, 2014. The respondent was arrested on the 7th August, 2014 and his case has been remanded since then.

Identity
5. No issue has been raised in relation to the respondent's identity. I am satisfied on the basis of the information in the EAW, on the affidavit of James A. Kirwan, member of An Garda Síochána and on the affidavit of the respondent that Eduardas Tagijevas who appears before me is the person in respect of whom the EAW issued.

Sections 21A, 22, 23 and 24 of the Act of 2003
6. I am satisfied that I am not required to refuse to surrender the respondent under s. 21(A), 22, 23 or 24 of the Act of 2003.

Part 3 of the Act of 2003
7. Part 3 of the Act comprises sections 37 to 46 inclusive. The respondent only raised issues under s. 37 in his points of objection. In carrying out the role of this Court as executing judicial authority in ensuring that surrender will only be effected when the requirements of the Act of 2003 are fulfilled, I have scrutinised the EAW, additional information, points of objection and verifying affidavits and exhibits. Subject to further consideration of sections 37 and 38, I am quite satisfied on the basis of such scrutiny that I am not required to refuse the surrender of the respondent under any other section contained in Part 3 of the said Act.

Section 38 of the Act of 2003
8. This is an EAW issued for the purpose of executing the custodial sentence imposed upon the respondent by a judgment of the 31st January, 2014 of the District Court of Vilnius city. That sentence was in respect of two offences arising from circumstances where he broke a car window, entered the car and took from the car a heater owned by a named individual. He was convicted of an offence of theft and an offence of destruction of damage to property as defined in Lithuanian law. I am quite satisfied that the acts set out in the EAW correspond with the offence of theft within this jurisdiction and with the offence of criminal damage, contrary to the Criminal Damage Act, 1991. It is also clear that the minimum gravity rules have been met in that a term of imprisonment of not less than four months has been imposed upon him. Therefore, I am satisfied that his surrender is not prohibited under section 38 of the Act of 2003.

Section 37 of the Act of 2003

The issue
9. The respondent objects to his surrender on the following ground: "[t]he proposed surrender of the Respondent in respect of the said offences to the issuing State is prohibited by section 37 of the Act of 2003 because, due to the prison conditions in Lithuania,

there are reasonable grounds for believing that the Respondent will be exposed to inhuman or degrading treatment in breach of s. 37 (1) (c) (iii) (II) of the European Arrest Warrant Act, 2003 (as amended) and Article 3 of the European Convention on Human Rights."

The basis for the claim

10. In support of his point of objection, the respondent swore an affidavit personally. He said that he was previously imprisoned in Lithuania and served a three year sentence from 2009 to 2012 in Lukiskes prison. He describes overcrowded cell accommodation, 23-hour lock up in the cell, and lack of appropriate space in the exercise area. He complains of inadequate food, laundry and washing facilities. He describes regular violence between inmates. He complains of a particular lack of dental care provided to him and a beating he received from prison staff when he complained about same. He is fearful that if he is returned to prison in Lithuania, he would be subjected to similar prison conditions as he had experienced in the past and that his health and life would be put at risk as a result of poor conditions that exist in Lithuanian prisons.

11. The respondent also relied upon an affidavit of Professor Rodney Morgan who reported on prison conditions in Lithuania and gave his professional opinion following consideration of the facts contained within his report. Professor Morgan's credentials as an expert in this area are set out in the *Minister for Justice Equality and Law Reform v. McGuigan* [2013] IEHC 216.

12. With specific reference to the respondent's position, Professor Morgan notes that the respondent says that he spent three years in custody at Lukiskes prison in Vilnius. He said it was unclear whether it was on remand or serving a custodial sentence or both. He says that the respondent's account of conditions there, which is the largest prison in Lithuania, is more or less consistent with the published evidence and his first hand experience ***to the extent that he spent his time there as a remand prisoner*** (emphasis added). He says that Lukiskes prison is one of three remand prisons for adult males in Lithuania but that a minority of prisoners at the three remand prisons are sentenced prisoners. He says that at Lukiskes prison, there is a lifer's wing and, as at the other two remand prisons, some sentenced prisoners are retained to service the prison. These prisoners work in the kitchen and deliver food to remand prisoners and clean the corridors and yards, etc. He says that because they are sentenced prisoners, they would be working for most of the day and not confined to the cell for 23 hours a day. It follows that the respondent's account is not consistent with serving a sentence at Lukiskes prison as a sentenced prisoner.

13. Professor Morgan, who did not visit any of the committal prisons, reviewed the reports on Lithuania of the Committee for the Prevention of Torture ("CPT"). The most relevant portions of his evidence will be referred to and discussed later. In conclusion, Professor Morgan says that were the respondent to be extradited to Lithuania:-

> "(a) in the unlikely event of his being allocated to Lukiskes Prison there is a possibility of his being held in conditions which are inhuman or degrading; and
>
> (b) were he located to a prison for adult, male, sentenced prisoners there is a high probability that the institution will exhibit, for want of adequate staff supervision of an environment where prisoners are allowed a great deal of movement with little in the way of positive activities, a high level of inter-prisoner exploitation and violence and, were he to seek protective isolation from this risk he would likely experience custodial conditions as unacceptable as those provided for remand prisoners at Lukiskes Prison."

The law

14. There was little dispute on the major principles of law applicable in this case. Under the provisions of section 37(1)(c)(iii)(II) of the Act of 2003, a person shall not be surrendered if there are reasonable grounds for believing that "he or she would be tortured or subjected to other inhuman or degrading treatment." That is treatment prohibited in absolute terms by Article 3 of the ECHR. The courts must proceed on an assumption that the issuing member state will respect human rights and fundamental freedoms. That assumption is capable of being rebutted. The Supreme Court in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] IESC 45 set out the applicable legal principles when considering a claim of apprehended prohibited treatment. For surrender to be prohibited, it is not necessary to establish that there will be a probability of ill-treatment, a real risk is sufficient. A mere possibility of ill-treatment is insufficient. There is an evidential burden on a respondent to adduce cogent evidence of proving that there were substantial grounds for believing that he or she would be exposed to a real risk of being subjected to treatment prohibited by Article 3 ECHR.

15. The court may attach importance to reports of independent human rights organisations and to governmental sources. It is open to an issuing state to dispel doubts raised by evidence but that does not mean that the burden has shifted. By the nature of the test, the court is required to be forward-looking in its approach. The court engages in a rigorous examination of the information placed before it.

16. The above principles have been applied by the High Court in a large number of cases concerning prison conditions. Examples are *Minister for Justice and Law Reform v. Mazurek* [2011] IEHC 204 (concerning Poland) and *Minister for Justice, Equality and Law Reform v. McGuigan* [2013] IEHC 216 (concerning Lithuania) and *Minister for Justice and Equality v. Savikis (ex tempore)* (concerning Lithuania). Each case must be decided on the strength of the evidence before it and the application of the well-established law to that evidence. As Edwards J. said at para. 142 in McGuigan, his judgment "*does not purport to propound any new principle of law and does not therefore have precedent value*."

17. A major part of the respondent's legal argument in this case was that the failure on the part of the issuing judicial authority to provide the name of the prison in which he will be detained if surrendered, meant the respondent could not be specific in relation to a particular prison. Therefore, the respondent submitted he can only refer to issues that have been discovered in prisons in general in Lithuania. He sought to distinguish Savikis, in which the respondent had been surrendered to Lithuania, on the basis that the prison in that case could be identified.

18. The Lithuanian authorities have explained that is not possible to identify the prison to which a sentenced prisoner will be sent. That decision will only be made following a decision of a special commission at the pre-trial detention facility after the committal to prison for sentence. This decision is made within 10 days of the surrender and takes into account the dangerousness of the convict, public safety, nature and seriousness of the offences committed, health, psychological characteristics, age, capacity for work, profession and attitude to work. In practice, the period from detention in a pre-trial facility to his carriage to a particular correction facility for the purpose of service of sentence is significantly shorter than the maximum 10 day period. This assessment of a prisoner is a legal requirement in Lithuania to which this court must have regard.

19. The fact that there is uncertainty as to which prison the respondent may ultimately be sent does not alter the purely evidential

burden on the respondent to establish by cogent evidence substantial grounds for believing that on surrender he is at real risk of being subjected to inhuman and degrading treatment. Such a real risk is capable of being demonstrated by a respondent in a variety of ways. In this case, the respondent has presented evidence in an attempt to establish that real risk. He did so by means of an expert who, although he had not visited the particular prisons, identified those where the respondent might be sent and went through the various conditions therein as set out in CPT reports. Professor Morgan put those reports in the context of various visits by the CPT to Lithuania and also in the context of improvements made within the prison system.

20. On the basis of the evidence produced in this case, the Court has been put on enquiry into whether there are substantial grounds for believing that if the respondent were surrendered to Lithuania, he would be at real risk of being subjected to inhuman and degrading conditions of imprisonment. I have considered carefully all the documentation before me and in particular the evidence of Professor Morgan, the CPT reports and the Lithuanian response.

21. While the Court has regard to the affidavit evidence of the respondent, it is clearly historical and relates to his status as a remand prisoner and not a sentenced prisoner. The older CPT reports on Lithuanian prisons have generated responses by the Lithuanian authorities, so that the conditions which obtained in the past cannot be said to be identical today. I will proceed to assess the real risk of the respondent being subjected to inhuman and degrading treatment having regard to the applicable legal principles.

The Court's determination on the facts

Remand prisons

22. Even though the respondent will be a sentenced prisoner, in light of each part of the conclusion of Professor Morgan as set out above, it is nonetheless important to consider the evidence relating to remand prisons generally and to Lukiskes prison in particular. As regards Lukiskes prison, Professor Morgan repeats the evidence he gave to the High Court by affidavit in the case of *Minister for Justice Equality and Law Reform v. McGuigan* [2013] IEHC 216 with one important addition. Since the decision in McGuigan, the Committee for the Prevention of Torture reported to the Lithuanian government on the Committee's visit to Lithuania from the 27th November to the 4th December, 2012. Professor Morgan asserts that the fact that the CPT has repeatedly inspected Lukiskes prison is indicative of Article 3 related problems: the CPT is a preventative body and focuses its attention on institutions about which, on the basis of multiple and undisclosed sources, the Committee has the greatest concerns.

23. According to the CPT 2014 report, in December 2012 Lukiskes prison "with an official capacity of 954 places – was holding 1,068 inmates, including 552 remand prisoners and 88 persons sentenced to life imprisonment". The CPT noted that the Lithuanian prison population represented an incarceration rate of some 325 per 100,000 inhabitants, one of the highest among Council of Europe Member States. The report states that the total number of prisoners had been rising constantly over the last decade. According to the CPT, the authorities recognise that the size of the prison population and the resulting overcrowding in prisons constituted a major challenge: "The delegation was informed that alternative measures to detention, including probation had recently been introduced. However it is clear that these measures have little impact so far. The fact that a state locks up so many persons cannot be convincingly explained away by a high crime rate; the general approach of members of the law enforcement agencies and the judiciary must, in part, be responsible". (CPT 2014 – para. 35)

24. The CPT pointed to the official minimum standard of living space per adult sentenced prisoner being 3.1m2 for dormitory-type accommodation and 3.6m2 for multi-occupancy cells. As they had indicated previously, those standards are too low. The delegation had also observed that those standards were often not respected. The delegation was told that a standard of 4m2 per prisoner would be used when designing new prisons.

25. With regard to Lukiskes prison, the CPT found that material conditions continued to vary considerably. Professor Morgan detailed the findings but it is unnecessary to expand on these for the purposes of this judgment.

26. Professor Morgan states that the CPT account cannot be taken to mean that all prisoners at Lukiskes prison are overcrowded. He said that his experience inspecting Lukiskes prison and Kaunas prison (another remand prison he had visited) is that no straight forward conclusions about overcrowding levels can be drawn from the aggregate number of prisoners reported to be housed in the prison. There is a risk of remand prisoners at Lukiskes prison being held in overcrowded conditions and unacceptable conditions for prolonged pre-trial periods.

27. Although Professor Morgan acknowledged that the Lithuanian authorities have demonstrated to the CPT that they are trying to move in the direction the CPT wishes, he states the fact that "the Lithuanian authorities are currently giving categorical assurances to the English courts that all extradited untried prisoners who will initially be held on remand will be held at Kaunas Prison and will not be held at either Lukiskes prison or Siauliai Prisons constitutes tacit recognition that custodial conditions in those two remand establishments remain unacceptable and that conditions at Kaunas (the third remand prison for adult males) are generally better."

28. Professor Morgan asserts that it is highly unlikely that the respondent will be held at Lukiskes prison as he has left the country in breach of his sentence of imprisonment and it is not plausible that he will be regarded as a trustworthy prisoner.

29. The Lithuanian authorities reply saying that their criminal policy since 2012 has undergone significant changes. They refer to the law on probation, amendments of the Code of Criminal Procedure and the Criminal Code, which came into effect on the 1st July, 2012, which has influenced significant reduction of persons detained/imprisonment in remand/correctional institutions. The number of inmates in penitentiary institutions has decreased by 10% since 2012. They say there has been a significant decrease of 21% in the numbers detained in remand prisons. They said that all remand prison places are not fully taken up.

30. The Lithuanian authorities also refer to the fact that since the 1st January, 2014, the Code of Criminal Procedure has been amended to allow the possibility of using video conferences of witnesses. There is a draft project for the use of remote interrogation of suspects/defendants under consideration. This should avoid the situation where inmates who are parties to other criminal cases have to be transferred from correctional institutions to remand prisons for interrogation procedures. They also say that the use of intensive supervision (electronic monitoring), a preventative measure which is expected to additionally cut down the number of detainees, has started to be applied since the 1st January, 2015. They say that if the downward trend regarding the number of detainees is to prevail, the standard of living space per person will additionally grow.

31. The authorities refer to ongoing improvement works within the prison system and gave details of a number of prisons including Lukiskes.

32. The Lithuanian authorities stated in additional information dated the 11th May, 2015, that the description of the situation in Lithuanian remand institutions featured in the supplementary report of Professor Morgan is based on the statistical data and

judgments of the court (it is unclear if this actually means the CPT) which is exclusively related to prison overcrowding in the period of 2008 to 2012. The authorities repeat that the issues concerning possible overcrowding of remand prisons laid down in the supplemental report are absolutely no longer relevant as all remand prisons in Lithuania are not fully taken up now and the actual average living space for one detainee is bigger than the guaranteed minimal standard which is 3.6m2. They say in relation to the report that the general conclusion that prison conditions would likely be judged inhuman or degrading is very doubtful having in mind the proposal in 2007 to conclude the agreement between the United Nations and the Government of the Republic of Lithuania in recognition of judgments of International Tribunals (International Criminal Tribunal for the Former Yugoslavia) and execution of the judgments in Lithuania, which means that at an international level, it is recognised that imprisonment conditions in Lithuanian penitentiary institutions meet at least minimal international standards.

33. The Lithuanian authorities reject the respondent's complaints about food, medical care, laundry and hygiene facilities. It is unnecessary to outline those issues in detail as they do not form part of the real issues in this case. They say that there is a prison library service also available for inmates and detainees.

34. Counsel for the respondent referred to the factual situation as referred to above. He relied upon the views of Professor Morgan as set out. He also referred to the fact that the respondent himself had personal experience of the prison conditions in Lithuania. He took issue with the reply of the Lithuanian authorities that the CPT had made no statements indicating that the conditions were in breach of Article 3 ECHR. He pointed out that the CPT made remarks in relation to conditions at Lukiskes in their report following their 2008 visit when they described some conditions there as outrageous and amounting to inhuman and degrading treatment, in particular para. 44 of that report. Counsel refers to the case of *Savenkovas v. Lithuania* (App. No. 871/02, 18th November, 2008) in which the European Court of Human Rights ("ECtHR") found conditions at Lukiskes prison in Vilnius had been inhuman and degrading.

35. The reply of the Lithuanian Ministry of Justice was described as generic and counsel submitted it did not address the issues that are specific to this respondent's case. Counsel further submitted that it did not alleviate the concerns raised in the report of Professor Morgan. In particular, counsel referred to the failure to give the undertaking that had been given to the UK courts that prisoners surrendered from the UK for trial will only be detained at Kaunas prison. It was submitted that this undertaking is evidence of an admission by the Lithuanian authorities that there are serious issues in other prisons in Lithuania relating to the conditions of detention for inmates.

36. Counsel for the Minister submitted that the conclusion of Professor Morgan's report only demonstrates a possibility of exposure to prohibited prison conditions. Counsel said that did not reach the required standard under *Rettinger* for surrender to be prohibited. There was no cogent evidence with regard to the respondent's placement in remand prisons.

37. In this case, the evidence establishes that sentenced prisoners in the remand prisons are not held in the same conditions as have been previously condemned. On the evidence provided by the respondent, it is abundantly clear that if he is held in a remand prison to serve his sentence, there is no risk of being subjected to inhuman and degrading treatment. On the other hand, there is a risk that he will be held on remand for a period of up to a 10-day maximum at a remand prison prior to being sent to a committal prison. In practice, that period will be shorter than 10 days.

38. The protection of rights under Article 3 ECHR, and indeed rights of an equivalent nature under Article 40.3 of the Constitution, are absolute. If he was at real risk of being exposed to inhuman and degrading treatment, his surrender would be prohibited. It is important to recall that, in some circumstances, it is the cumulative nature of certain conditions or the duration of a particular condition that amounts to inhuman and degrading treatment. It was the cumulative effect of certain conditions established on the evidence that resulted in the High Court refusing surrender in *McGuigan*. The High Court referred at para. 140 in that case to the real risk of a breach of rights "*particularly where he is likely to be in pre-trial detention for at least some months*." In other words, conditions that are sub-optimal, or approaching the cusp of inhuman and degrading, may reach a level of inhuman and degrading treatment where the conditions persist.

39. In the circumstances set out herein, I do not consider that the risk that he will be kept in Lukiskes remand prison for up to a maximum of 10 days establishes substantial grounds for believing that there is a real risk that he will be exposed to inhuman and degrading conditions of detention. Indeed, it is striking that Professor Morgan does not deal expressly with the limited period of time that he might be kept in that prison while awaiting placement as a sentenced prisoner. It is also important that the Court recognise that it must be forward-looking. In that regard, it is noted that the CPT report published on the 4th June, 2014, refers to the aim of the Lithuanian authorities to transfer prisoners to an establishment in Pravieniskes by 2015, although Lukiskes would remain open beyond that date. Improvements have been made to Lukiskes in the meantime. Overcrowding has been reduced overall in the prison system. In all of those circumstances, I am satisfied that the limited duration of that period of remand type imprisonment does not establish a real risk that even if he were to be held in Lukiskes for that short period, that he would be subjected to inhuman and degrading treatment.

The Committal prisons

40. Counsel for the Minister submitted that, at its height, inter-prisoner violence was the issue. Based upon the papers put before the Court and in particular the conclusions of the respondent's expert, that submission is correct. The issue is whether the level of supervision provided in the prisons together with the lack of activity may result in increased inter-prisoner violence, leading to the respondent seeking protective custody which will result in a real risk that those conditions will amount to inhuman and degrading treatment.

41. In the words of Professor Morgan, he gives "a general account of what the CPT has found in prisons for sentenced prisoners". The conclusion of Professor Morgan is also quite general. It is a conclusion based upon a number of contingencies. The risk of inhuman and degrading treatment arises only if a number of other conditions are reached. It is certainly possible to establish that the circumstances show that there is a real risk of each condition being established, thus establishing the overall real risk of prohibited treatment. It is necessary to examine each individual prison and the nature of the conditions therein and to then assess the real risk in accordance with the applicable legal principles.

42. Professor Morgan identifies four prisons for adult male prisoners. He says it is very likely that if the respondent is extradited, he will be allocated to one of these institutions.

Pravieniskes Number 2 prison

43. Professor Morgan refers to a report from the CPT in 2000. At that point, it was noted to be 17% overcrowded. In specific parts of the prison, there was particular overcrowding. There was little to occupy prisoners. There was much inter-prisoner violence. Segregated prisoners and their conditions came in for particular criticism by the CPT. In relation to the segregated conditions, that level of overcrowding and cell confinement was worse than that found by the CPT to be inhuman and degrading at Lukiskes remand

prison. Those conditions had applied to prisoners, some of whom were in segregation for their own protection, rather than purely disciplinary reasons.

44. In 2000, the Lithuanian authorities informed the CPT that they planned that the prison population should be greatly reduced and the problem of overcrowding eliminated. When the Committee returned in 2004, it was informed of steps that seemed to reflect progress in that direction. The Lithuanian authorities reported that the legal standards for the provision of living space for prisoners had been increased (to 5m2 per person in multi-occupancy cells in prisons and 3m2 in dormitories and correction homes). The CPT welcomed the steps but discovered that overcrowding still posed a major problem, not only in the establishments visited, but in the prison systems as a whole.

45. In the additional information regarding Pravieniskes correction house, the Lithuanian authorities stated in additional information that reconstruction is under process. It says that by April 2016, the dormitories will be fully reconstructed into cell-type inmate living premises. They say that the installation process of four additional half-way correctional institutions are in the final stages and that by the end of 2015, the new institutions will start functioning. Projects are being assisted by a Norwegian financial mechanism.

46. In reply to doubts raised about sufficient employment of prisoners, the additional information made a reply that covers the position generally regarding inmates and detainees within the Lithuanian prison system. The authorities state that the government is currently revising existing practices regarding inmates' involvement in labour activity and is considering increasing the number of work places. The authorities say it is also important to note that detainees and inmates have a right to study in secondary or professional school and to be engaged in individual work or creative activities. Prisoners may also exercise in well-equipped sports grounds.

47. The Lithuanian authorities say that from the 1st September, 2015, significant changes in the training of new prison staff will commence its application. This will become a two-year professional studies course instead of the average duration of six weeks of existing initial training of prison officers.

48. The authorities also confirm that under legislation, the director or director's deputy of a remand/penitentiary institution must immediately report in writing to a prosecutor of the territorial prosecutor's officer, any bodily injury made to an inmate and must also initiate an internal investigation. They set out the details as regards the requirement for medical examination in those cases and the recording of the results of that examination in a special register. The Lithuanian authorities said that it should be noted that in recent years, there had been no (registered) instances in practice so far of the failure to notify the prosecutor of bodily injuries made to inmates as well as no criminal investigation started on excessive use of force against detainees/inmates.

49. The Lithuanian authorities acknowledge that there is still a lot to be done to improve the conditions of detention/imprisonment in Lithuania and that the necessary actions are already being taken. Nonetheless, existing conditions cannot be equated to inhuman and degrading conditions. They said that it should also be noted that there are no statements in the CPT reports that conditions of detention/imprisonment in Lithuanian custodial facilities could be understood as degrading treatment and causing breaches of Article 3 of the ECHR. The CPT and the Seimas Ombudsman's Office (acting as a national preventative mechanism since 1st January, 2014) provide only for comments and recommendations on the improvement of conditions of detention/execution of sentences and the majority of these recommendations have been immediately followed as much as it was possible under the financial possibilities of Lithuania.

50. The evidence establishes that at the time Pravienskes No. 2 was inspected in 2000, it was very overcrowded. The level of overcrowding and cell confinement was worse than that deemed inhuman and degrading at Lukiskes and applied to those in segregation for their own protection as well as for purely disciplinary matters. Those in administrative segregation had more space and had reading materials unlike those in disciplinary segregation.

51. It is clear that the Lithuanian authorities increased the living space per person subsequent to that report. In 2006, the CPT welcomed those changes but said overcrowding still posed a major problem, not only in the establishments visited on that occasion but in the prison system as a whole. Since that report, the Lithuanian authorities have identified a further significant decrease in the prison population and have put in place other systems which should reduce the population further. It is also clear that there has been reconstruction going on within the prisons.

52. In my view, the evidence of Professor Morgan on conditions in Pravienskes No. 2 is outdated. While I accept that the overall position as to prison population and capacity may not be a complete indicator of problems within particular prisons or parts thereof, there is simply no up-to-date evidence that there is overcrowding at this prison. Specifically, there is nothing to indicate the present position in this particular prison with regard to numbers in custody, the present overcrowding position and in particular the position with regard to administrative segregation. In particular, it is the custody in protective isolation that is claimed to create the risk of inhuman and degrading treatment but yet there is no reference to what that will entail for this particular prison at this particular time. Therefore, the real risk of inhuman and degrading treatment has not been established in so far as it relates to this prison.

Marjampole correction home

53. Professor Morgan stated that this prison was visited in 2004 by the CPT. In this prison, work had already begun to refurbish the establishment by converting large dormitories into smaller cell-type accommodation. Building One, designed to accommodate newly arrived prisoners and prisoners held in the strict regime, now provided "very good material conditions…the envisaged living space per prisoner being adequate (at least 5m2 per person)." By contrast, the report highlighted the material conditions in the un-renovated parts of the establishment were very poor. Those are described in the CPT report. In addition, the living space per prisoner was insufficient throughout the establishment.

54. The CPT report noted that the provision of work and other programmes for sentenced prisoners was better at Marjampole in 2004 than at Pravieniskes prison in 2000. However, there were 400 prisoners in total who did not work at all. A large proportion of those prisoners did not want to work due to the prevailing prison sub-culture. The CPT also found that there was common inter-prisoner violence and evidence of parallel ill-treatment by staff.

55. The 2006 CPT identified that Marajampole Correction House was 54% overcrowded but work had begun on renovating parts of the prison. Parts of the prison were overcrowded and had poor material conditions. The provision of work and other programmes was better than at Pravieniskes No. 2 prison. However, the prevailing sub-culture meant that a lot of prisoners did not work. This meant that inter-prisoner violence was common and there was parallel ill-treatment by staff. Voluntary segregation meant loss of certain rights. Professor Morgan does not suggest that the CPT report stated that the cell confinement conditions were inhuman and degrading. Again, there is no updated evidence on this prison. There is no evidence to support the contention that the particular conditions of cell confinement are inhuman and degrading.

Pravieniskes correction home number 3
56. In 2008, the CPT inspected the above prison. This was a more modern prison which had been renovated or completely rebuilt. It was under-occupied at the time as a result of a decision to re-role the prison to take first time sentenced prisoners, thereby alleviating the fact that it was reported as overcrowded elsewhere. There was little comment in the CPT report save for a concern that at this prison, as elsewhere, has a high proportion of prisoner officer posts that were vacant. This was a matter for concern given the Committee's apprehension regarding low staff prisoner ratios and the high incidents of inter-prisoner violence.

57. An issue raised in Professor Morgan's report was the potential for inter-prisoner violence given the lack of staff. That on its own was not, however, put forward as sufficient to establish inhuman and degrading treatment. The issue is the conditions in segregated confinement, yet there is no evidence about such conditions in this prison. Therefore, it is not established that there is a real risk for believing that the respondent will be subjected to inhuman and degrading treatment if confined in this prison.

Alytus correction facility
58. In December 2012, the CPT inspected for the first time the above prison. This is a prison with two wings with a total official capacity of 1,460 and which at the time of the visit housed 1,426 prisoners. Renovation work had been carried out in many parts of the prison in recent years and work in one section had been completed shortly before the visit.

59. The CPT judged the material aspects of prisoner attention at Alytus to be generally satisfactory albeit and despite the fact that the prison overall was not crowded but there was severe overcrowding in certain areas. Thus, in some cells, the prisoners had less than 2m2. Again, the CPT reiterated its recommendation that the minimum standard of living space per prisoner be raised to 4m2 in multi-occupancy cells (not counting the area taken up by any in-cell toilet facility) throughout the prison estate. The official capacities of all prisons should be reviewed accordingly.

60. Professor Morgan says that it should be noted that the Lithuanian authorities frequently claim there is no overcrowding in particular establishments because the overall number of prisoners housed is below or similar to the stated overall capacity of the prison. Overall capacity and overall occupancy is not a good guide to this issue as the CPT report has again found.

61. In 2012, the Commissioner heard few allegations of ill-treatment in the remand establishments visited, but the situation at Alytus was very different. There were a number of consistent allegations from prisoners regarding ill-treatment and excessive use of force by certain prison officers. The names of a small number of prison staff were repeatedly mentioned to the delegation. The medical records were consistent with allegations made.

62. The CPT's finding regarding inter-prisoner violence at Alytus prison was even more serious. They were struck by the level of such violence, particularly in local sectors, i.e. prison units where inmates were accommodated in unlockable dormitories with some 20 places. Fights took place regularly, confirmed by the medical evidence gathered by the delegation from the register of bodily injuries. There was an over-reliance by prison management on prisoner orderlies to maintain order within the establishment. It was unacceptable that rather than staff being in control of the units at all times, control of the inmates were exercised by such official orderlies and informal leaders.

63. In their 2012 report on Alytus Correction Facility, the CPT stated that the prospect of becoming a victim of beatings, extortions and other forms of abuse was "a daily reality for many vulnerable prisoners". There were insufficient prison officers at night or over the weekend. It was in this context that the CPT referred to the 35 out of 46 prisoners who were in disciplinary cellular confinement at their own request to avoid what they perceived as being placed with a dangerous local sector. The CPT say this is indicative of the scale of the problem of inter-prisoner violence that such a large number of inmates were prepared to accept the "consequential poor regime available in segregation" in order to ensure their security.

64. At the end of its visit in 2012, the CPT delegation expressed its serious concern about the situation and resorted to an "immediate observation" under Article 8 (5) of the Convention Against Torture, and emergency provision for use when the Committee has imminent and grave concerns about breaches of Article 3. The CPT stressed that a comprehensive and thorough independent inquiry was required to analyse the underlying problems and produce a plan for far-reaching changes. The CPT stressed that an effective strategy to tackle inter-prisoner violence involves ensuring that prison staff are placed in a position to exercise their authority in an appropriate manner. They said that the level of staffing must be sufficient including at night-time to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the performance of their tasks. The problem of inter-prisoner violence would be inevitably difficult in dormitory type accommodation aggravated by those dormitories being open 24 hours a day.

65. In response, the Lithuanian authorities wrote several letters, referred to above, indicating actions being taken at Alytus and giving details as to how they proposed improving matters there. In their letter of the 25th March, 2013, the Lithuanian authorities informed the CPT that the Ministry of Justice had initiated inspections of Alytus prison. In February 2013, the Seimas Ombudsman carried out a review of the activities in the administration of the establishment at the request of the Ministry of Justice. Among the measures in relation to ill-treatment by staff, a specific working group within the prison was set up by the prison director to investigate the use of force and special means. Training on human rights in prison, the use of force and special means and anger management were organised for Alytus prison officers. The Lithuanian authorities indicated that some measures had been taken to reduce interpersonal violence at the prison, including installation of observation rooms and CCTV cameras in local sectors two and three, review of the security plans and an anger management programme for inmates.

66. The CPT took note of those initial measures and said it would like to receive detailed information of the implementation of the above mentioned actions as well as the outcome of the internal audit scheduled in 2013.

67. According to Professor Morgan, there are also differences in quality of provision within prisons of which Alytus is no exception. In one dormitory in Alytus in which 700 inmates were accommodated, there had been no renovation and it was in a very bad state of repair which was also observed by the Seimas Ombudsman. The building was dirty and run down with crumbling walls and damaged floors, dilapidated furniture as well as very old and foul-smelling sanitary installations in the corridor. The bunks and bedding left much to be desired. Inmates indicated the presence of rats and cockroaches. The prison director indicated that the scheduled renovation of this building had been postponed due to financial constraints.

68. The CPT found that there were a limited number of activities being offered to inmates. Some 700 sentenced prisoners were not involved in any educational/training programmes and work activities. Admittedly, they did have access during the day to the exercise yards to the local sector, most of which were quite large, as well as access to the gym.

69. Professor Morgan says it goes without saying that this combination of large numbers of prisoners housed in large accommodation

units, some of which are dismally run down, and are free to move about during the better part of the day without provision of any purposeful activity, is toxic for prisoner safety, especially if, as at Alytus, there is totally inadequate staffing provision. The CPT had noted inadequate staff presence in the different local sectors at all times. Furthermore, the CPT judged the provision of medical facilities at Alytus, where a high proportion of prisoners have communicable diseases, to be "clearly inadequate".

70. The Lithuanian authorities also refer to the technical project being designed for the reconstruction of dormitory number 2 in Alytus correction house. Before that starts, however, some usual repair works, e.g. repairing of ceilings, walls, painting of the floor and renovation of the sanitary units, are in the process in those parts of the dormitory where the conditions are less satisfactory.

71. What is striking is that Professor Morgan does not detail what the "consequential poor regime" in the segregation unit is. Yet, in his conclusion, he says that he links these conditions to those found unacceptable for remand prisoners at Lukiskes. As detailed above, the conditions at Lukiskes were found unacceptable on a number of grounds by the CPT. A major issue was the overcrowding in both the dormitory accommodation and the multi-occupancy cells. Furthermore, material conditions were deplorable, e.g. dilapidated furniture, broken windows in parts of the prison, un-partitioned toilet facilities, insufficient heating, and inadequate light in some cells. There was cell lock up for 23 hours a day with no out-of-cell activities other than outdoor exercise of one hour in small dilapidated yards. This is apparently not the overall position in Alytus (and indeed may not be the position with regard to administrative segregation in any of the other prisons). For example, in the CPT report of 2012, there is reference to disciplinary cellular confinement (emphasis in original report). These prisoners were confined to cells for 23 hours a day and only reading was permitted, with no television or radio. By emphasising disciplinary cellular confinement, it is a reasonable inference to draw that the provisions for administrative cellular confinement is different. Administrative cellular confinement, it is reasonable to infer, would incorporate protective custody. There is no further information on the nature of the cells or the material conditions in which persons will be confined. It is also noted that even disciplinary cellular confinement can only last a total of 6 months. There is a restriction of 15 days placement in a disciplinary cell as punishment for adults but that appears to be entirely different from the more general disciplinary cellular confinement.

72. The CPT accepted, as I also accept, that certain measures have been put in place by the Lithuanian authorities at Alytus, e.g. cameras and anger management courses for prisoners. Further improvements are underway in Alytus but are not in place at present.

73. In the submission of counsel for the Minister, the 2012 CPT report did not go so far as to say that the conditions were deplorable or inhuman or degrading. He pointed to the conclusion on overcrowding at Alytus where he said it was seen as generally satisfactory.

74. Counsel submitted that, as Edwards J. had noted in Savickis, Professor Morgan had never been to the particular (committal) prison(s) at issue here. Counsel submitted that sub-optimal conditions did not contravene Article 3 – there had to exist "conditions which, either in respect of one particular feature or cumulatively, are of such severity as to amount to inhuman and degrading treatment."

75. Counsel for the Minister contrasted the evidence in this case with that in *Attorney General v. Piotrowski* [2014] IEHC 540 in which highly detailed country of origin information was put before the Court painting "*a grim picture of significantly substandard prison conditions, and regular serious ill treatment of prisoners, in all categories of places of detention, and all across Ukraine*" (para. 96 of that judgment). Counsel submitted that the *Piotrowski* case was authority for the fact that the respondent's personal experience carried limited weight as it was not recent. His experience was limited to Lukiskes as a remand prison, whereas the respondent in the current case will be sent to a committal prison.

76. In reply, counsel for the respondent noted that the CPT had visited the four prisons as above. In Alytus, the inter-prisoner violence was not to be categorised as random acts but rather a systemic problem. It was also submitted that the prisons were overcrowded and that merely giving percentages in each prison did not reveal the true picture.

77. Having carefully considered the evidence placed before me in this case, it is marginal whether the real risk has been established that the respondent is likely to find himself in the position with regard to seeking protection from inter-prisoner violence. The only relatively recent up-to-date evidence is as regards Alytus prison. The CPT referred in its report to the reality for vulnerable prisoners of inter-prisoner violence. I have no evidence before me that this respondent is a vulnerable prisoner. I have been asked by counsel for the respondent to give weight to the respondent's experience of conditions in detention in Lithuania. I have referred to how the weight to be attached to that is limited. It is, however, of some weight that in his description of conditions which included a reference to inter-prisoner violence, he made no mention of his own experience of same or his vulnerability to same. On a more general level, he will not be a prisoner serving a sentence for a sexual crime or a crime of some notoriety which of itself might make him vulnerable.

78. Even if I do accept that the level of inter-prisoner violence is at such a level that he will seek protective custody, I am not satisfied that there are substantial grounds for believing that there is a real risk of him being subjected to inhuman and degrading treatment. I have not been given any evidence, through CPT reports or otherwise, to ground the professional opinion of Professor Morgan that the segregation conditions would be as unacceptable as those in Lukiskes prison. It may be unsatisfactory or sub-optimal that a person is required to seek administrative detention or protective custody because of the risk of being subjected to inter-prisoner violence but that in itself does not establish an Article 3 violation. That is implicitly accepted by Professor Morgan as it is not the inter-prisoner violence that he links with an Article 3 breach but the unacceptable conditions in which the respondent may be held if he seeks protective custody.

79. It is therefore the conditions of that detention that would have to create the real risk of the violation. As stated above, Professor Morgan's report has nothing to say about the particular protective custody conditions in Alytus. There is, therefore, no cogent evidence grounding his opinion that he would be held in conditions as unacceptable as those for remand prisoners at Lukiskes.

80. I will also comment that the findings of any relevant international bodies, courts of other jurisdictions and indeed of this court that the Lithuanian prison conditions are inhuman and degrading relate to remand prisons. That on its own is not definitive as it is for this court to assess the position based upon its analysis of the evidence placed before it, having considered the applicable legal principles in this jurisdiction. On the evidence in this case, however, it has simply not been established that the respondent is at real risk of being subjected to inhuman and degrading conditions in Alytus or indeed any other prison on surrender to Lithuania.

81. Finally, I would like to observe that in circumstances where Professor Morgan has limited experience of committal prisons and is relying on CPT reports, the value of his continued input in these cases is questionable. I refer back to Professor Morgan's statement that he is giving a general account of what the CPT found in prisons for sentenced prisoners. The Court is in a position to review those reports and understand the general account being given therein.

Conclusion
82. In all the circumstances and for the reasons set out above, I am satisfied that, in accordance with the provisions of s. 16 (1) of the Act of 2003, I may make an order directing the surrender of the respondent to such person as is duly authorised by the Republic of Lithuania to receive him.