*Akcine Bendrove Bankas Snoras v Vladimir Antonov*[2013] EWHC 131 (Comm).

**The Stay Application**

1. I deal first with Mr. Antonov's application for a stay of the underlying civil proceedings brought by the Bank (including the discrete application for a stay of the Variation Application) until after the final determination of the extradition proceedings currently pending against Mr. Antonov, since this was the first matter argued before me.
2. Mr. Antonov's position in relation to this application, as presented by Mr. James Lewis QC, who argued this aspect of Mr. Antonov's case on his behalf, was, in summary, as follows:

i) It was appropriate to stay the hearing of Mr. Antonov's Variation Application pending the conclusion of the extradition proceedings, if, and to the extent that, in the context of the Variation Application, the Court considered it necessary to determine questions of Lithuanian fair trial procedures or the issues as to whether the criminal proceedings were politically motivated and whether the collapse of the Bank was brought about by the actions of Mr. Antonov and Mr. Baranauskas, or the politically motivated interference of the Lithuanian government. These issues should more properly be considered in the context of the extradition proceedings, where the evidential enquiry would be more extensive. Mr. Antonov would suffer prejudice in the event of the Commercial Court making potentially adverse findings on the basis of a less thorough evidential enquiry than that which would occur in the context of extradition proceedings; the District Judge hearing such proceedings would be likely to be influenced by any such judgment of the Commercial Court. Alternatively, there was a potential risk of conflicting judgments which might inhibit Mr. Antonov's right of appeal.

ii) Furthermore, the entirety of the proceedings in this action should be stayed pending the outcome of the extradition proceedings, including any appeal by either party to the High Court, and, thereafter, to the Supreme Court. In the light of the provisions of the 2003 Act, such stay would not be for a long period of time, as extradition proceedings had to be heard speedily.

iii) Once the extradition proceedings had been determined, the position would be crystallised. Either Mr. Antonov's resistance to the extradition proceedings would have succeeded, in which case there would be no objection to the Bank's civil proceedings continuing in this jurisdiction, since there would be no possibility of a criminal trial in Lithuania; or, alternatively, if his challenge to the extradition proceedings failed, different considerations would apply at that stage as to whether it was appropriate for the civil proceedings to continue in this jurisdiction pending Mr. Antonov's criminal trial in Lithuania, and, indeed, his possible detention there.

iv) The balance of competing interests in the case fell squarely in favour of a stay of the civil proceedings pending the conclusion of the extradition proceedings The key factors weighing in favour of a stay were as follows:

a) There was a real risk that information and evidence provided by Mr. Antonov in these proceedings would be used against him by the Lithuanian Prosecutor, in breach of his privilege against self-incrimination, both in the extradition proceedings and in the criminal proceedings in Lithuania. There were no adequate safeguards which could be put in place to protect him from this risk, other than a temporary stay of the civil proceedings. The reality was that any information provided to the Bank in the civil proceedings would be made available to the Lithuanian Prosecutor; that it was inevitable that that would happen was because of a number of reasons: first, there was a clear identity between the Bank and the Lithuanian state, given its recent nationalisation; second, in any event, the Lithuanian state was a substantial creditor of the Bank in its insolvency[[4]](https://www.bailii.org/ew/cases/EWHC/Comm/2013/131.html#note4) and had effectively five seats out of nine on the creditors committee; third, this was not a situation where the prosecuting authority, i.e. the Lithuanian Prosecutor, was prepared to give, or was in a position to give, any undertaking not to use any information obtained as a result of the civil proceedings in the criminal proceedings; contrast the position in English proceedings, where the SFO or CPS was the prosecuting authority and was able to give an enforceable undertaking in this respect; and fourth, the evidence amply demonstrated that there had been a free flow of information from the Bankruptcy Administrator to the Lithuanian Prosecutor; for example, the evidence served on behalf of the claimant had clearly been provided to the Lithuanian Prosecutor. There was thus no possibility of any realistic or adequate ring fencing provisions that could be put in place to prevent the use in the criminal proceedings of materials disclosed in the civil proceedings. Mr. Antonov's expert evidence of Lithuanian law was to the effect that, as soon as the Bankruptcy Administrator was in possession of relevant information, he might be compelled to provide it to the Lithuanian Prosecutor and other investigating authorities in Lithuania and elsewhere.

b) The provision of any such information would enable the Lithuanian Prosecutor to tailor his case both in relation to the extradition proceedings and also in relation to the criminal proceedings, as indeed he had already done to date in relation to the extradition proceedings.

c) There was a very significant overlap not only between the subject-matter of the civil proceedings and the extradition proceedings (and indeed the criminal proceedings) against Mr. Antonov, but also the issues at stake in each; the extradition proceedings were clearly the more appropriate forum for determination of those issues. It followed that there was a risk of prejudice to Mr. Antonov by virtue of conflicting judgments if the civil proceedings were not stayed pending extradition proceedings.

d) While the privilege against self-incrimination was very important, there was a basic fairness and justice point arising out of general prejudice; namely the prejudice to Mr. Antonov in having to disclose his hand and the unfair advantage which that afforded to the Bank; that was especially acute, in proceedings where, in effect, the Lithuanian state was behind both the civil proceedings and the criminal proceedings. Although counsel for the Bank had attempted to draw fine distinctions between the Bank and the state, so far as counsel for the Lithuanian Prosecutor was concerned, he had expressly said in the restraint proceeding that they were one and the same thing.

e) The concurrency of the proceedings risked Mr. Antonov being placed in a position of being prejudiced in his ability properly to defend the extradition proceedings – with extremely serious consequences – by reason of the time and resources which would have to be devoted to defending the instant proceedings.

f) An order for Mr. Antonov's extradition to Lithuania would overturn the sole basis upon which the High Court was presently a convenient forum to hear this claim, namely his residence in England. It followed that the outcome of the extradition request should take precedence over the civil claim in order that the question of *forum non conveniens* could properly be addressed in the event that Mr. Antonov was extradited. In those circumstances, a substantial issue would then inevitably arise as to whether Mr. Antonov could fairly defend proceedings in England from prison or detention in Lithuania. In the meantime it would be unfair on Mr. Antonov and disproportionate and unsatisfactory from a case management perspective for him to be required to take further steps in the proceedings and to disclose his defence, in circumstances where ultimately, if he failed to resist extradition, the civil proceedings in this country might be stayed.

v) In further support of these propositions, Mr. Lewis submitted that:

a) Any disclosure by Mr. Antonov of details of the assets which he acquired after he acquired his interest in the Bank in March 2003, could potentially be self-incriminatory since theoretically identification of current assets could provide an audit trail back to original assets allegedly misappropriated from the Bank.

b) Even if the court were to accede to the Variation Application, and to vary the disclosure provisions of the WWFO, so that Mr. Antonov was not required to disclose details of the assets which he acquired after he acquired his interest in the Bank in March 2003, because of the risk of self-incrimination in relation to the criminal proceedings, inherent in the compelled provision by Mr. Antonov of asset disclosure, nonetheless the risk of self-incrimination permeated every other procedural step which Mr. Antonov would have to take in order properly to defend the Bank's claim in the civil proceedings. Any written defence, any disclosure of documents, any witness statement and any answers given under cross-examination would all run the risk of exposing Mr. Antonov either to the real risk of self-incrimination or to that of judgment being entered against him.

c) Such evidence, according to the expert evidence of Mr. Antonov's lawyers, could not only be used to inform the criminal investigation but also as evidence in any criminal proceedings which might in due course be brought against Mr. Antonov. It could also and importantly be used to assist in relation to the current extradition proceedings. In particular, an argument would be run on Mr. Antonov's behalf in the extradition proceedings to the effect that it could be inferred that the criminal proceedings were politically motivated, because of the weakness of the Bank's claim in the civil proceedings, and therefore, consequentially, the claim in the criminal proceedings. In this context, any provision of information in relation to Mr. Antonov's defence could potentially be damaging to Mr. Antonov.

d) It was common ground between the Lithuanian legal experts, that in Lithuania itself no order for the disclosure of Mr. Antonov's assets could be made either in civil or in criminal proceedings, despite the fact that UK Restraint Orders in relation to numerous assets, located both within and without Lithuania, had been made. That was another reason for staying proceedings in the present case, or least for varying the disclosure order. The court should take into account the fact that the Lithuanian Prosecutor had requested the CPS to seek a disclosure order in respect of Mr. Antonov's assets, but that the CPS had declined to do so.

e) The court should also take into account the fact that it was likewise common ground that, in Lithuania, civil proceedings would only follow after the conclusion of the criminal proceedings.

1. The Bank's position in relation to the Stay Application, as presented by Mr. Antony Zacaroli QC, was in summary as follows:

i) The onus was on Mr. Antonov to prove that the hearing by the Commercial Court of the Variation Application (i.e. his application to dispense with the obligation to provide disclosure of his assets) prior to the hearing of the extradition application would give rise to a real risk of serious prejudice that might lead to injustice. In reality, there was no such risk.

ii) Mr. Antonov's application to stay the civil proceedings pending the conclusion of the extradition hearing was in reality, and with one exception, based on arguments that, if the civil proceedings continued, he would be prejudiced in the criminal investigation and criminal proceedings in Lithuania, rather than any particular prejudice in relation to the extradition proceedings.

iii) But, in any event, the grounds alleged by Mr. Antonov did not either separately or cumulatively provide a sufficient basis for staying the civil action particularly when balanced against the prejudice to the Bank and its creditors if the civil claims were stayed pending the conclusion of criminal proceedings in Lithuania, or indeed the conclusion of the extradition proceedings which, together with appeals, might extend into 2014.

iv) Given that there was no compulsion in the civil proceedings to provide incriminating information, since Mr. Antonov was not obliged in the civil proceedings to admit anything, and was entitled to resist disclosure, provision of further information and questions in cross-examination on the grounds that compliance with any such orders might tend to incriminate him, there was no basis for saying that injustice would be caused. In any event Mr. Antonov had already provided substantial details of his positive defence.

v) Moreover, there was no realistic basis for contending that Mr. Antonov would suffer any prejudice if the civil proceedings continued pending the determination of the extradition proceedings. No aspect of any judgment in relation to the current applications could in reality influence the judge on the extradition application. The issues which arose on the extradition application were entirely different from those which arose in the civil proceedings. Thus there would be no real risk of serious prejudice that might lead to injustice.

vi) And finally, even if the court were to conclude that there was a real risk of serious prejudice leading to injustice if civil proceedings were to continue, then the stay requested should nevertheless be refused on the grounds that adequate safeguards could be put in place to minimise the risk of injustice to Mr. Antonov. Thus:

a) The Bank would be willing to accept restrictions on the extent to which any document setting out or referring to the grounds of Mr. Antonov's defence was disseminated beyond the Bank's legal team in England and named individuals at Zolfo Cooper within England; see*A-G for Zambia v Meer Care & Desai & Ors* [[2006] EWCA Civ 390](https://www.bailii.org/ew/cases/EWCA/Civ/2006/390.html) at [27] –[31].

b) A restriction on the dissemination of such documents would ensure that they were not available within Lithuania, and thus could not, as a matter of fact, be used by the Lithuanian Prosecutor. Such an order would not however, as Mr. Zacaroli made clear in oral argument, prevent the dissemination of information contained in such documents, albeit in breach of a party's obligation only to use disclosed documents for the purposes of the civil proceedings in which they were disclosed.

c) Any hearing in the civil action at which the merits of Mr. Antonov's defence were to be revealed (including the trial) could be ordered to be heard in camera; see *Zambia v Meer Care & Desai* at paragraph 32; and

d) Any judgment on the merits of the civil claim could itself be embargoed pending conclusion of the criminal proceedings in Lithuania.

**Relevant legal principles applicable to the grant of a stay of civil proceedings**

1. There was very little difference between Mr. Lewis QC and Mr. Zacaroli QC as to the relevant principles applicable to the grant of a stay of civil proceedings. For present purposes they may be summarised as follows:

i) The court has a discretion to stay civil proceedings until related criminal proceedings have been determined, but it "is a power which has to be exercised with great care and only where there is a real risk of serious prejudice which may lead to injustice"; see *R v Panel on Takeovers and Mergers, ex p Fayed* [1992] BCC 524, per Neill LJ at p.531E-F; cited with approval in *A-G of Zambia v Meer Care & Desai & Ors* [[2006] EWCA Civ 390](https://www.bailii.org/ew/cases/EWCA/Civ/2006/390.html).

ii) The discretion has to be exercised by reference to the competing considerations between the parties; the court has to balance justice as between the two parties; a claimant has a right to have its civil claim decided; the burden lies on a defendant to show why that right should be delayed; see*Panton v Financial Institutions Services Limited* [[2003] UKPC 8](https://www.bailii.org/uk/cases/UKPC/2003/8.html) (PC) at [11].

iii) A defendant must point to a real, and not merely notional, risk of injustice. As the Privy Council stated in *Panton* (*supra*):

"A stay would not be granted simply to serve the tactical advantages that the defendants might want to retain in criminal proceedings. The accused's right to silence in criminal proceedings was a factor to be considered, but that right did not extend to give a defendant as a matter of right the same protection in contemporaneous civil proceedings. What had to be shown was the causing of unjust prejudice by the continuance of the civil proceedings".

iv) The fact that a defendant has a right to remain silent in criminal proceedings, and would, by serving a defence in civil proceedings, be giving advance notice of his defence, carries little weight in the context of an application for a stay of civil proceedings. There is no right to invoke the privilege against self-incrimination in relation to putting in a defence, as compared with the right in civil proceedings to invoke the privilege where a defendant is being interrogated, being compelled to produce documents or cross-examined; see per Waller LJ in *V v C* [[2002] CP Rep 8](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Civ/2001/1509.html), at paragraphs 37 and 38. In a civil trial there is no immunity against adverse comment or adverse inference from a failure to provide answers for the trial or to give evidence at the trial; a defendant does not have to put in a defence or give evidence at a civil trial but, if he does not, the court can draw an inference because in a civil trial it is not his "right" not to do so; that is important in the summary judgment context, because, if the claimant can establish his claim (for example on a summary judgment application) without interrogatories or disclosure, then a privilege against self-incrimination is not in fact relevant; see *ibid*at paragraph 37.

v) Moreover, today, even in criminal proceedings, at least in England and Wales, a defendant is expected to adumbrate a positive defence at an early stage. Thus the disclosure of a defence in civil proceedings is unlikely to disadvantage a defendant in criminal proceedings; see *ibid*at paragraph 38.

vi) It is also legitimate, when balancing the competing considerations between the parties, to take into account that a positive defence is likely to exculpate, rather than incriminate, a defendant; as Waller LJ said at *ibid*paragraph 39:

"Third, it is legitimate to start from the position that a positive defence is likely to exculpate rather than incriminate. It is legitimate to expect an explanation on oath as to the nature of the defence that the defendant has so that a court can see (a) whether there is a reason for a trial on the merits; and (b) whether the way in which having to fight the summary judgment application or the trial may impinge on the fair trial of the defendant in a criminal court. In this context, if it is obvious that a full trial must proceed and that an order for production of documents, for example, is going to be met [by] a claim of privilege against self-incrimination, postponement of the civil trial may be appropriate. But if a claimant can establish his case without compelling information or evidence from a defendant, the only relevant impact on the criminal trial to be considered is what the effect of entering a summary judgment will be. The onus is on the defendant at all stages to demonstrate that the civil process should not proceed, and the stronger the case against the defendant in the civil context the higher the onus on the defendant should be."

vii) It is not enough, as Briggs J observed in *FSA v Anderson*[[2010] EWHC 308 (Ch)](https://www.bailii.org/ew/cases/EWHC/Ch/2010/308.html) at [19], that both the civil and criminal proceedings arise from the same facts, or that the defence of the civil proceedings may involve the defendant taking procedural steps such as exchanging witness statements and providing disclosure of documents which might not be imposed upon them in the criminal proceedings.

viii) As Mr. Zacaroli submitted, a defendant thus has a choice between remaining silent in the civil proceedings or risk giving an indication of his defence which may be used by the prosecuting authorities. The harshness of such a choice did not provide a good ground for staying civil proceedings in *V v C*(*supra*) or in *Jefferson Limited v Bhetcha*[1979] 1 WLR 898.

ix) In the event that the court were to be satisfied that there would be a real risk of serious prejudice leading to injustice if the civil proceedings continue, then the proceedings should nevertheless not be stayed if safeguards can be imposed in respect of the civil proceedings which provide sufficient protection against the risk of injustice: see e.g. *Re DPR Futures*[1989] 1 WLR 778, per Millett J at 790G; *A-G for Zambia v Meer Care & Desai & Ors* (*supra*) at paragraphs 30-33.

**Discussion and determination**

1. I am not persuaded that either:

i) the hearing of the Variation Application; or

ii) the continuance of the civil proceedings generally, would cause a risk of serious prejudice, which might lead to injustice so far as Mr. Antonov is concerned in relation either to the extradition proceedings in this country, or to the criminal investigation or a possible criminal trial in Lithuania. Accordingly I am not prepared to grant a stay of the civil proceedings or the Variation Application. My reasons are set out below.

**Application to stay the entirety of the civil proceedings pending: (i) the conclusion of the extradition proceedings; and/or (ii) the conclusion of the criminal proceedings in Lithuania**

1. As I have already said, although the subject matter of the civil proceedings and the criminal proceedings overlap to a considerable extent, I am not satisfied that there would be a real risk of serious prejudice leading to injustice if the civil proceedings were to continue, pending the conclusion of the extradition proceedings and pending the conclusion of the criminal proceedings in Lithuania. Any such prejudice as there might be in Mr. Antonov having to disclose his defence or participate in the civil proceedings could not, in the circumstances of this case, be characterised as being so serious as to lead to injustice, given that any such prejudice as there might be, can, in my judgment, be adequately addressed by the proposed safeguards to which I refer later in this judgment. Moreover, taking into account, on the other side of the scales, the competing interests of the Bank and its creditors, the prejudice and potential damage caused to the Bank and its underlying creditors as a result of the delay that would inevitably occur, if I were to stay the proceedings, would, in my judgment, considerably outweigh any possible prejudice that Mr. Antonov might suffer through having (metaphorically) to put his cards on the table in the civil proceedings and because of the risk of his rights to a fair criminal trial in Lithuania being compromised.
2. It is necessary to look at the various anticipated stages of the civil proceedings to see how Mr. Antonov could be prejudiced or compromised for having to participate or risk the consequences of summary judgment.
3. The first stage, of course, is service of his defence. It is clear from the evidence and defence statements served on behalf of Mr. Antonov in the context of the extradition and the UK Restraint Order proceedings, that he has already disclosed, in some considerable detail, his defence in relation to a major part, albeit not every aspect, of the civil case. For example, in relation to the Julius Baer allegations, he has variously contended:

i) that he did not transfer or arrange the transfer of securities belonging to Snoras Bank out of its account with Julius Baer for Mr. Antonov's benefit and that

"At no time have any Snoras Bank assets been stolen from its Julius Baer account and Mr. Antonov asserts that the bank statements of that account will show this to be true";

ii) that nothing in certain accounts supported the allegation that the securities in question were ever out of the control of Bank Snoras, since:

"The treasury department of Bank Snoras at all times had control over the accounts in which the securities were placed in Bank Julius Baer";

iii) that the allegedly misappropriated funds were in fact held in accounts at Julius Baer in the Bank's name or under the control of the treasury department, and they were under the day to day management and control of the Bank (although not managed by Mr. Antonov himself);

iv) that executives and officers at both the Bank and Julius Baer regularly met to discuss the details of the bank accounts at Julius Baer; and

v) that in connection with the Julius Baer account, offshore structures were put in place for the benefit of the Bank, set up upon advice received from Julius Baer, and the Bank retained complete control and visibility over all of the Julius Baer accounts and offshore structures.

1. Moreover is clear that his approach is exculpatory, rather than a defence of silence or admission. He has a choice, as is demonstrated from the authorities cited above, as to the extent to which he puts forward a positive defence. I see no reason why he will be unduly prejudiced in either the extradition proceedings or the criminal investigation by the requirement of serving a defence. Mr. Lewis submitted that Mr. Antonov cannot sensibly respond to the allegations of misappropriation in the Particulars of Claim without addressing the question of whether he knew about the particular transactions at that time, and that this would be unfair, because it would, in effect, amount to an admission that he knew about them. I see no unfairness in this. If Mr. Antonov chooses, it is open to him merely to plead a defence of generality as already set out on his behalf in the extradition and UK Restraint Order proceedings, to the effect that he was not involved in day-to-day transactions and put the Bank to proof of the allegations that he was aware or party to the particular transactions in question.
2. As was accepted in argument by Mr. Lewis, it is clear that, because of the recent order of the District Judge, the SFO and the Lithuanian Prosecutor are no longer able to amend or revise the EAWs in the light of any material emanating from Mr. Antonov's defence or otherwise. In this respect therefore, it cannot be said there is any real prejudice to Mr. Antonov, so far as the extradition proceedings are concerned, in requiring him to serve a defence. For example, I cannot see that, in such circumstances, any defence served by Mr. Antonov could aid the Lithuanian Prosecutor in discharging his burden to show that the allegations in question are extradition offences within the meaning of section 64 of the 2003 Act or otherwise in connection with the extradition proceedings. Whether the requesting territory can prove that offences in an EAW extradition are offences depends on the information provided in the warrant itself and any supporting documentation, which has no doubt already been served. I suppose it might be the case that any defence served by Mr. Antonov could theoretically weaken his arguments to the effect that the court could infer that the criminal proceedings were politically motivated, because of the weakness of the case against him, but I see no unfairness or prejudice in that. If the reality is that his pleaded defence in the civil proceedings is weak and undermines any such argument, then so be it.
3. Third, and more generally, I see no unfair prejudice in the context of the criminal proceedings, or indeed in the context of the English civil proceedings, for Mr. Antonov to have to serve a defence. The choice is for him as to the course which he adopts in connection with his defence; he can simply put the Bank to proof of its claims; he can put forward a limited defence; or he can put forward a full and positive exculpatory defence. He is under no compulsion to admit anything or to incriminate himself. Thus, for example, it will be open to him to argue, at a future stage, should the need arise, that there should be no summary judgment pursuant to Part 24, but rather that the matter should proceed to trial, on the grounds that there is a compelling reason for a full trial pursuant to Part 24.2 (b) on the grounds that, because of the potential for self-incrimination in the criminal proceedings in Lithuania, or the difficulties which he faces in the criminal trial, it has not been possible for him to develop a positive defence. Whether such would be an appropriate course, will depend on all the evidence before the court at the time. Neither this judgment, nor any comments made by the court during the course of argument, should be taken as in any way predicating, or indicating, the outcome of any such application, were it to be made.
4. As Mr. Zacaroli submitted, and as the authorities demonstrate, the mere fact that a defendant may lose some tactical advantage in the criminal proceedings by having to disclose his defence early in the civil proceedings is not sufficient to constitute substantial or unfair prejudice or injustice, such as to justify a stay.
5. However, I can see that, if Mr. Antonov is realistically obliged to serve a full defence, because he wishes to avoid the risk of summary judgment proceedings, there is, notwithstanding the above arguments, the risk that his defence, or any information in it, might come into the possession of the Lithuanian Prosecutor and might potentially incriminate him. That might cause him serious prejudice in the criminal proceedings irrespective of whether, or not, provision of a defence, or of an affidavit in response to an application for summary judgment under CPR Part 24, is technically made under compulsion and therefore an erosion of his rights under Article 6 of the European Convention on Human Rights ("the Convention") not to incriminate himself or to a fair trial. Similar considerations apply, for example, to the disclosure stage, where Mr. Antonov will *prima facie* be under compulsion to provide documents notwithstanding that they may incriminate him, as well as to later stages in the trial, such as requests for further information and to cross-examination.
6. It thus seems to me appropriate and proportionate in the present context, where the Lithuanian state has a considerable economic interest in the outcome of the litigation, where the Bank is now nationalised and where the Bank and the Lithuanian Prosecutor have a common interest in establishing Mr. Antonov's liability in the civil proceedings, that certain safeguards should be put in place in order to protect Mr. Antonov's Convention rights not to incriminate himself ("the proposed safeguards"). An entirely free flow of the information provided by Mr. Antonov in his defence of the civil proceedings from the Bank to the Lithuanian Prosecutor does not, in the particular circumstances of this case, sit altogether happily with the concept of a fair criminal trial, particularly in circumstances where there are allegations of political motivation on the part of the Lithuanian Prosecutor. I make this comment despite accepting, for present purposes, the statements in the Bank's evidence as to the extent of the flow of information between the Bank and the Lithuanian Prosecutor.
7. The proposed safeguards, which I propose to order, will, at least to a limited extent, operate to prevent the use or deployment of Mr. Antonov's defence, and of any information contained in it, in the Lithuanian criminal investigation and in any subsequent trial proceedings. I set out the conditions which I have in mind below since they address not only the defence, but also disclosure, witness statements and other aspects of the proceedings. They reflect and slightly extend proposals made by the Bank in paragraph 56 of the Bank's skeleton argument and amplified by Mr. Zacaroli in the course of argument. They are the type of ring-fencing orders that were put in place *A-G for Zambia v Meer Care & Desai & Ors*[[2006] EWCA Civ 390](https://www.bailii.org/ew/cases/EWCA/Civ/2006/390.html" \o "Link to BAILII version) at paragraphs 27-31.
8. The next stage in the civil trial process after pleadings will be disclosure. It may be a matter of some debate whether Mr. Antonov will have the right at that stage to resist the compulsory requirements of disclosure and inspection of documents in the civil proceedings, pursuant to either CPR Part 31.3 or the inherent jurisdiction of the court, on the grounds that to do so would adversely affect his rights and not to incriminate himself, and to a fair trial, in the context of the Lithuanian criminal proceedings. Such a claim might be made pursuant to the Human Rights Act 1998 ("the 1988 Act") and/or Article 6 of the Convention; see generally the notes at: CPR 31.3.31 (right against self- incrimination); 31.3.32 (the 1998 Act); 31.3.36.1 (the Convention). The fact that, pursuant to section 14 of the Civil Evidence Act 1968, the common law privilege against self-incrimination in English civil proceedings no longer extends to a liability to foreign criminal proceedings, and that, at least in relation to English criminal proceedings, Section 13 of the Fraud Act 2006 abrogated the privilege against self-incrimination in respect of English civil proceedings relating (*inter alia*) to fraudulent misappropriation of property[[5]](https://www.bailii.org/ew/cases/EWHC/Comm/2013/131.html" \l "note5), might not necessarily preclude such an application based on an alleged breach of Mr. Antonov's Convention rights. However, more formidable hurdles are likely to be the ECHR decision in *Saunders v United Kingdom* (19187/91) [[1997] BCC 872](https://www.bailii.org/cgi-bin/redirect.cgi?path=/eu/cases/ECHR/1996/65.html), and the subsequent English decision of *C Plc v P* [[2007] EWCA Civ 493](https://www.bailii.org/ew/cases/EWCA/Civ/2007/493.html); [2008] Ch.1; E.R. 1034, CA. In *Saunders*the Court stated at paragraphs 68 and 69:

"68. The Court recalls that, although not specifically mentioned in Article 6 of the Convention, the right to silence and the right not to incriminate oneself, are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6. Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6.38 The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. In this sense the right is closely linked to the presumption of innocence contained in Article 6(2) of the Convention.

69. The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, *inter alia*, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing. In the present case the Court is only called upon to decide whether the use made by the prosecution of the statements obtained from the applicant by the Inspectors amounted to an unjustifiable infringement of the right. This question must be examined by the Court in the light of all the circumstances of the case. In particular, it must be determined whether the applicant has been subject to compulsion to give evidence and whether the use made of the resulting testimony at his trial offended the basic principles of a fair procedure inherent in Article 6(1) of which the right not to incriminate oneself is a constituent element.

38 See MURRAY v UNITED KINGDOM and FUNKE v FRANCE, *loc. cit.*"

1. In *C Plc v P* (a case concerning the seizure under a search order of material in respect of which the privilege against self-incrimination was asserted generally), the Court of Appeal held by a majority that at common law, and even before the enactment of the 1998 Act, the privilege against self-incrimination did not extend to documents and things which had an existence independent of the will of the person relying on the privilege and regardless of whether civil or criminal proceedings were involved. Accordingly there was no privilege in the instant case since the material existed independently of the will of the party asserting the privilege even though obtained as a result of executing the compulsory powers/provisions of the search order. Mr. Lewis submitted, in reliance upon the dissenting judgment of Lawrence Collins LJ (as he then was) at paragraphs 45-51, that if in fact the production of documents entailed what had been described under US law as "testimonial disclosure" - in other words an implied statement as to the person's knowledge of, association with, or control over the documents, then the privilege against self incrimination arose. He accordingly submitted that at common law the protection given may be wider than the minimum required under ECHR jurisprudence. (Leave to appeal to the House of Lords was given; [2008] 1 W.L.R. 153, but the matter does not seem to have been taken any further).
2. But these are not issues which I have to decide at this stage. If and when an application is made by Mr. Antonov to entitle him to refuse to disclose, or provide inspection of, incriminating documents, such an application can be considered on its merits and on the evidence before the court at that time. As Mr. Zacaroli submitted, it might well be that the Bank would not oppose any application by Mr. Antonov to resist disclosure and inspection of incriminating documents, since the Bank might be in a position to prove its case on the basis of its own documents. In any event, the proposed safeguards, which I propose to put in place as a condition of allowing the action to go forward, in relation to documents disclosed by Mr. Antonov, will go a considerable way to reducing the risk of any improper disclosure. In addition, the court hearing any such application could impose additional conditions to ensure that disclosed documents were not used for purposes other than the English civil proceedings and that any compulsorily disclosed documents did not improperly fall into the hands of the Lithuanian Prosecutor.
3. The next stage of the trial process will be the exchange of witness statements. The proposed safeguards will prevent the use or dissemination of witness statements provided by Mr. Antonov and his witnesses other than for the purposes of these civil proceedings, without the prior approval of the court. Thus, with these safeguards in place, I cannot see that the witness statement stage of the trial process is likely to give rise to any prejudice and certainly no serious prejudice so far as Mr. Antonov is concerned.
4. Likewise, if necessary, adequate procedures could be put in place at the trial of this action to provide that Mr. Antonov's evidence, and that of his witnesses, was given in private, so as to prevent any improper use of his evidence in the Lithuanian criminal investigation or at his criminal trial. However, I do not consider that it is appropriate for me at this stage to make any such order governing the trial process. The picture may look very different as the trial date approaches. That will be a matter for the judge hearing the case management conference or the pre-trial review to decide.
5. Other points made by Mr. Lewis, or in Mr. Antonov's evidence, in support of the stay application, were not persuasive. It was suggested that there is a real risk that his ability, and that of his representatives, to present a robust defence to the extradition proceedings would be compromised by the time, resources, effort and focus which his defence to the civil proceedings would inevitably require, and that, accordingly, it would be oppressive for him to be facing parallel proceedings. I cannot accept that having to fight on two fronts will cause such serious prejudice to Mr. Antonov as to lead to injustice. The evidence shows that Mr. Antonov has assets in many jurisdictions round the world and that the disclosed assets in England alone are of considerable value; he is therefore not without adequate funds to instruct lawyers to represent him. He instructed four Counsel to represent him on these applications. It may be inconvenient and stressful for him to have to defend a number of proceedings at any one time, but that *per se* does not give rise to injustice.
6. His concerns that presently co-operating witnesses will cease to assist him, if they are required to provide assistance in respect of two sets of proceedings, likewise provides no ground for a stay. In any event, as Mr. Zacaroli submitted, it is no more than speculation that witnesses would be, or are being, put off by the potential duplication of proceedings. There could be any number of reasons why witnesses, who originally expressed a willingness to assist, have declined to do so. The allegation that witnesses are being put off because of fear of repercussions in Lithuania similarly provides no basis for a stay of the civil proceedings in this jurisdiction. These are difficulties which, if they are real, he will face at any time.
7. Mr. Antonov contends that there may well be issues of *forum non conveniens*if he were to be extradited to Lithuania, since he would be imprisoned pending the outcome of an investigation and criminal proceedings, which would be likely to take years. Mr. Lewis submitted that, in those circumstances an issue would arise as to whether, if the Bank were minded to continue proceedings in the United Kingdom, the court would grant a stay on *forum non conveniens*grounds and because of Mr. Antonov's inability fairly to defend those proceedings from prison in Lithuania. But those issues provide no basis for granting a stay of the civil proceedings at the present time. Mr. Cooper has made it clear that it is the Bank's intention to continue with the civil proceedings in England even if Mr. Antonov is extradited. The stage for the court to consider, if at all, whether or not a stay on such grounds should be ordered, will only arise once the extradition proceedings (including any appeals) conclude. As I made clear in the course of argument, any order refusing a stay would not preclude such an application being made by Mr. Antonov at that stage, in the event that he is extradited to Lithuania. But given the uncertainty as to when the extradition hearing, and any appeals, will finally conclude, it is a possibility that the civil action can be well advanced, if not disposed of, before the extradition proceedings have run their course.
8. Whatever the prejudice to Mr. Antonov in these proceedings continuing, the court also has to take into account the interests of the Bank and its creditors, I have little doubt that a stay, whether until the determination of the extradition proceedings, or worse, until determination of the criminal proceedings in Lithuania which would be highly likely to last for many years, would be seriously prejudicial to them. As Mr. Zacaroli pointed out, Mr. Antonov has yet to be extradited from the UK or charged with an offence in Lithuania. At the time of the hearing before me it was not known whether Mr. Antonov would be ready to commence and complete the extradition hearing in January 2013, or whether he would seek an adjournment in respect of all or some of the points he is raising. Even if the hearing were to be concluded in early 2013, and Mr. Antonov failed in resisting extradition, there would inevitably be an appeal to the High Court and it is reasonable to assume that any appeal from an extradition order made in early 2013 would not be concluded until well into the second half of 2013. There is then the real possibility that Mr. Antonov may seek to make a further appeal to the Supreme Court. Even once Mr. Antonov were extradited to Lithuania, Mr. Antonov's Lithuanian law expert opined that the pre-trial investigation process in Lithuania would be likely to be lengthy. He cited by way of comparison other cases of a complex nature where the pre-trial investigation period had lasted between five and seven years. For the Bank to be prevented from pursuing its remedies against Mr. Antonov, and for its creditors to be kept out of the substantial sums which they had deposited or invested, allegedly lost as a result of the actions of Mr. Antonov (the amount allegedly misappropriated by him is in the region €500 million), for a considerable period of time would be seriously detrimental to them. The lack of recovery for creditors of an insolvent entity such as the Bank is a highly relevant factor, as noted by Millett J in *Re DPR Futures Ltd*[1989] 1 WLR 778 at 790 G. Such a long delay would also, as Mr. Zacaroli submitted, run the risk of adversely affecting the Bank's ability to present its case at trial. The delay inherent in any stay would give rise to a real risk of witnesses' memories fading, or witnesses dying or becoming unavailable. Most importantly, on the basis of the evidence before me, any stay of the civil proceedings could seriously affect the Bank's ability to locate and freeze sufficient assets, against which it could enforce any judgment which it might obtain against Mr. Antonov.
9. Accordingly, in my judgment, permitting the civil proceedings to continue, pending the conclusion of both the extradition proceedings and the criminal investigation and proceedings in Lithuania, would not, given the proposed safeguards which I intend to order, cause such serious prejudice to Mr. Antonov as to amount to an injustice. In contrast, the prejudice which would be suffered by the Bank, and its creditors, in having to wait years for the opportunity to pursue an action to recover funds allegedly misappropriated from the Bank, outweighs any inconvenience or prejudice to Mr. Antonov from the civil proceedings continuing.

**The proposed safeguards**

1. The Bank's evidence was to the effect that an order made by an English court prohibiting the Bankruptcy Administrator or any employee or agent of his, from disclosing any documents or information provided by Mr. Antonov in the course of the civil proceedings, to the Lithuanian Prosecutor would be respected by the latter and no attempt would be made to require the Bankruptcy Administrator to provide copies to him. However, in the light of the opposing evidence on this topic from Mr. Antonov's expert, Mr. Zacaroli, for the purposes of this application, realistically approached the matter on the assumption that there was a risk that the Lithuanian Prosecutor would, or could, by the exercise of his powers, have access to any document, or information, held by the Bankruptcy Administrator in Lithuania.
2. In those circumstances, the safeguards which I intend to impose in order to protect Mr. Antonov's position against possible incrimination or other prejudice in the criminal investigation or proceedings as a result of steps taken by him in the civil proceedings, will be along the following lines:

i) without the permission of this court, as to which the parties are to be at liberty to apply, neither Mr. Antonov's defence, nor any document setting out, or referring to, any grounds of his defence, nor any subsequent pleadings served by him, nor any response by him to requests for further information in relation to such defence ("the relevant defence documents"), are to be disseminated beyond named members of the Bank's legal team, Mr. Cooper and named members of his staff in England, and necessary witnesses or experts in the civil proceedings and all relevant defence documents are at all times to remain in England; such restraint will apply to such documents notwithstanding they may be read to or by the court or referred to in any hearing held in public; neither the Bank, nor any members of its legal team, nor Mr. Cooper or any of his staff, will be entitled to provide any third-party with copies of any relevant defence documents; nor, without the prior permission of the court, will any third-party be entitled to apply to the court for a copy of such document;

ii) without prejudice to CPR 31.22, without the permission of this court, as to which the parties are to be at liberty to apply, no documents disclosed by Mr. Antonov to the Bank, including but not limited to any documents read to or by the court or referred to in any hearing held in public, ("Mr. Antonov's disclosed documents") are to be disseminated beyond named members of the Bank's legal team, Mr. Cooper and named members of his staff in England, and necessary witnesses or experts in the civil proceedings; and all copies of Mr. Antonov's disclosed documents in the possession of the Bank and such named parties are at all times to remain in England; neither the Bank, nor any members of its legal team, nor Mr. Cooper or any of his staff, will be entitled to provide any third-party with copies of Mr. Antonov's disclosed documents; nor, without the prior permission of the court, will any third-party be entitled to apply to the court for a copy of such document; this restriction will obviously not apply to documents disclosed by the Bank or obtained from third parties, notwithstanding that they may be the same documents, or copies of the same documents, as those disclosed by Mr. Antonov;

iii) without prejudice to CPR 32. 12 without the permission of the court as to which the parties are to be at liberty to apply, no witness statements served by Mr. Antonov, or on his behalf ("Mr. Antonov's witness statements"), are to be disseminated beyond named members of the Bank's legal team, Mr. Cooper and named members of his staff in England, and necessary witnesses or experts in the civil proceedings; and all copies of Mr. Antonov's witness statements in the possession of the Bank, or such named persons, are at all times to remain in England; neither the Bank, nor any members of its legal team, nor Mr. Cooper or any of his staff, will be entitled to provide any third-party with copies of Mr. Antonov's witness statements; nor, without the prior permission of the court, will any third-party be entitled to apply to the court for a copy of such document;

iv) without prejudice to the above procedure rules, without the permission of this court, as to which the parties are to be at liberty to apply, neither the Bank, nor any members of its legal team, nor Mr. Cooper or any of his staff shall be entitled to use the relevant defence documents, Mr. Antonov's disclosed documents, or Mr. Antonov's witness statements or the information contained in any such documents or witness statements (save to the extent that such information is known to the Bank from its own record or an independent source), save for the purposes of these proceedings, and in particular, but without limit to the generality of the foregoing, they shall not be permitted to use such information for the conduct of investigations and/or civil and/or criminal proceedings in Lithuania or any other country.

1. The above is no more than an outline of the regime which I intend to impose. I shall hear argument from counsel as to the precise drafting of the proposed safeguards; in particular it may be appropriate to give sanction in advance to the Bank to enable it to use the relevant materials in freezing applications intended to made in other jurisdictions. I appreciate that the safeguards are not perfect or exhaustive; that there is a risk that, contrary to the evidence of Lithuanian law currently served on behalf of the Bank, the Lithuanian Prosecutor may not respect the ring-fencing regime imposed by this court; and that, consequently, Mr. Cooper, when in Lithuania, may be subject to a compulsory request by the Lithuanian Prosecutor for information or for documents that come within the above categories. However if that risk materialises, then the Bank, and indeed Mr. Cooper, will be able to apply urgently to this court and it may need to consider the matter afresh. But for the time being I consider that they adequately protect the interests of Mr. Antonov in the Lithuanian criminal proceedings, and balance the competing interests of the Bank and its creditors on the one hand and that of Mr. Antonov on the other.