



Neutral Citation Number: [2020] EWHC 2815 (Admin)

Case No: CO/1566/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20<sup>th</sup> October 2020

Before :

**MR JUSTICE FORDHAM**

Between :

**MODESTAS BUIVIS**

**Appellant**

- and -

**DEPUTY PROSECUTOR GENERAL (REPUBLIC  
OF LITHUANIA)**

**Respondent**

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**Mary Westcott** (instructed by Birds Solicitors) for the **Appellant**  
The **Respondent** did not appear and was not represented

Hearing date: 20<sup>th</sup> October 2020

Judgment as delivered in open court at the hearing

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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

**MR JUSTICE FORDHAM :**

1. I am adjourning this application for permission to appeal together with the other applications that are before the Court. I am taking that course in the following circumstances. On one of the grounds put forward in this case an ‘amended’ version of the grounds of appeal dated 16 October 2020 flesh out the argument by reference to the citation of a line of authority. On seeing that, I wished the Respondent specifically to have the opportunity to respond to that fleshing out of the point if it wished to do so. In helpful exchanges yesterday the parties arrived at this position: the Respondent did want such an opportunity and the Appellant recognised its appropriateness; a timetable for written submissions was agreed with a view to this case being adjourned for a week. I am provisionally saying that, if possible, the hearing should be next Tuesday, 27 October 2020 at 9am before me. It may be that there will be a different listing and it is possible that a different judge will deal with it.
2. I have not heard any oral argument on any point. I will briefly explain the fleshed out point which precipitated the exchanges and the adjournment properly sought this morning by Ms Westcott. I emphasise that I have not, even provisionally, formed a view as to other points in the case. Everything remains fully open for argument. I am not therefore saying that this point is the only potentially viable one in the case, nor that I currently have a view as to its viability. It is simply a question of ensuring a fair opportunity to respond to what seems to be a relevant question where authorities have recently been found and cited.
3. The argument has three stages. It arises under section 21A of the Extradition Act 2003 in the context of an accusation EAW. It relates, in particular, to ‘likely penalty’. The first stage of the argument is this. Absent specific information from the requesting state the Court is at least entitled to apply domestic sentencing practice as a measure of likelihood: see Miraszewski [2014] EWHC 4261 (Admin) [2015] 1 WLR 3929 at paragraph 38. The second stage in the argument involves considering likely penalty against relevant domestic case law. Four cases have been identified though in the most recent a further two cases are cited. In date sequence the four cases are Hoxha [2012] EWCA Crim 1765, Picchi [2014] EWCA Crim 2771, Mehmeti [2019] EWCA Crim 751 and Coskun [2019] EWCA Crim 2135. The third stage in the argument is that the answer to the second step then produces the same consequence as arose in Kalinauskas [2020] EWHC 191 (Admin) at paragraphs 16 to 22.
4. Everybody has their powder dry as to what they are submitting or will in due course submit on this point (and all other points). My purpose at this stage is simply to identify the point that struck me, on the papers, as one in relation to which it was appropriate to ask the Respondent whether they wished to have an opportunity to respond, as they have confirmed they do, and as Ms Westcott recognises is in the circumstances appropriate. It is in those circumstances that I adjourn the applications before me with a timetable for written submissions.

20.10.20