Neutral Citation Number: [2020] EWHC 3199 (Admin)

Case No: CO/3328/2019 and CO/4036/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 November 2020

Before :

LORD JUSTICE POPPLEWELL
MR JUSTICE JOHNSON

- -

Between :

(1) MARTINS DANFELDS
(2) ENDIJS JODELIS

Appellants

- and -

GENERAL PROSECUTOR'S OFFICE, LATVIA

Respondent

- -
- -

David Perry QC and Mary Westcott (instructed by Lawrence & Co.) for the First Appellant
David Perry QC and Saoirse Townshend (instructed by Oracle Solicitors) for the Second Appellant
Jonathan Hall QC and Jonathan Swain (instructed by CPS) for the Respondent

Hearing date: 17 November 2020

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Approved Judgment

Lord Justice Popplewell and Mr Justice Johnson:

1. These two separate cases concerning extradition to Latvia have been heard together, at every stage, because they raise a common issue about prison conditions in Latvia. In each case extradition was ordered by District Judge Zani, sitting at the Westminster Magistrates' Court. Permission to appeal was refused on the papers by Sir Wyn Williams, but was granted following a renewed application in the Divisional Court (Nicola Davies LJ and Julian Knowles J): [2020] EWHC 2042 (Admin).

First Appellant: Background facts

2. The First Appellant was born in June 1989. He has two children, a daughter and son who are now aged 6 and 3½ respectively. He has had very little contact with either child. He has a sister who lives in the UK and with whom he has had regular contact.

3. On 4 January 2014 the First Appellant, together with another man, committed a street robbery. They attacked a woman from behind by punching her to the head. They stole items worth €139.40.

4. On 23 February 2014, the First Appellant, together with another man, broke into seven separate business premises located in the same building, and stole property worth €3,756.68 and caused damage of €490. He was prosecuted for these offences. He was remanded in custody pending trial for a period of 156 days. He says that (on an unspecified date between February and July 2014) he was attacked by other inmates at Liepaja Prison when he refused to give them money. He was struck to the head with what felt like a metal object. He sustained a wound which required sutures. He did not report the assault to the prison authorities, instead saying that he had fallen from a top bunk.

5. He was convicted of the offences. On 23 July 2014 the court imposed an aggregate sentence of 2½ years' imprisonment, suspended for 4 years.

6. The First Appellant failed to comply with the conditions of the suspended sentence. He came to the UK on 10 October 2014 and has lived and worked in the UK since then. He accepts that he is a fugitive, but says that he came to the UK to put his criminal lifestyle behind him and to start afresh. On 21 December 2016 the suspended sentence was activated. A European Arrest Warrant was issued on 7 November 2017. He has been remanded in custody since his first appearance before Westminster Magistrates' Court on 13 April 2019, a period (as at the date of this hearing) of 19 months. The time that the First Appellant has spent in custody in the United Kingdom (taken together with the time he spent on remand in Latvia) must be credited against the custodial penalty imposed in Latvia. It is agreed that the net result is that the First Appellant has just over 5 months left to serve.

7. The First Appellant contends that his extradition would be incompatible with the prohibition on inhuman and degrading treatment under Article 3 of the European Convention on Human Rights, because he would be at real risk of facing inhuman and degrading prison conditions. He also contends that his extradition would amount to a disproportionate interference with this right to respect for private and family life under Article 8 ECHR.

The Second Appellant: Background facts

8. In June 2011 the Second Appellant committed offences of criminal damage and burglary. In October 2015 he committed offences of drink-driving. A sentence of 9 months and 18 days was imposed for these offences. The Second Appellant did not serve his sentence in Latvia – he came to the United Kingdom in November 2015. A European Arrest Warrant was issued, but this was discharged in February 2018 because the Second Appellant had served the entirety of his sentence on remand in the UK.

9. Separately, however, it is alleged that on 21 September 2015 the Second Appellant committed three further offences:

   (1) theft of cigarettes, Coca-Cola and chocolate from a kiosk, value €28.77;

   (2) criminal damage to the kiosk, value €55.36;

   (3) theft of cigarettes from a kiosk, value €88.

10. His extradition for trial on these offences was sought by a European Arrest Warrant issued on 20 April 2018. He has been on conditional bail since 28 February 2020 subject to an electronically monitored curfew requirement for a period each day which would count towards service of any English sentence of imprisonment under section 240A Criminal Justice Act 2003.

11. The Second Appellant makes the same argument under Article 3 ECHR that is advanced by the First Appellant. In addition, he fears reprisals from a criminal gang to whom he owes money. He also relies on his relationship, in the UK, with his partner. He contends that extradition would amount to a breach of his right to respect for private and family life and that it would, in any event, be disproportionate.

The hearing before District Judge Zani

12. Both cases were heard together by District Judge Zani, sitting at the Westminster Magistrates' Court, on 19 July 2019. Orders for the extradition of the Appellants were made on 20 August 2019 and 10 October 2019 respectively.

13. In respect of prison conditions in Latvia, the Appellants relied on a report published in June 2017 following visits to Latvian prisons in April 2016 by the European Committee of the Council of Europe for the Prevention of Torture and Inhuman or Degrading Treatment or Publishment ("the CPT report"). They also relied on a decision of the Crown Court in Northern Ireland, *R v Konusenko* (transcript of judgment, 18 January 2019), in which an order for extradition was refused on Article 3 grounds, having regard to the CPT report.

14. In relation to the complaints about prison conditions in Latvia, DJ Zani said:

> "79. …this issue has been considered in some considerable detail in *Brazuks v Latvia* [2014] EWHC 1021 (Admin) ('Brazuks') when the Divisional Court emphatically rejected any general argument in respect of the Latvian prison estate.

> 80. However, the defence say that the situation has moved on since *Brazuks* and needs to be the focus of this court's attention, particularly in the light of… the June 2017 CPT Report. That followed a visit to Latvia in April 2016, that is to say, over 3 years ago. It is a mixed report which does, however, acknowledge a difficulty caused by inter-prisoner violence.
>
> 81. The defence have not provided any recent expert evidence to support this challenge and, as was stated in the European Court (Grand Chamber) decision in *Muršic v Croatia* (Application no. 7334/13)…, the findings/recommendations in a CPT report are not determinative of the issue.
>
> 82. The defence do rely on the contents of 2 recent Amnesty International Reports dated February 2018 and October 2018… In my view, these reports do not provide the detail needed to enable the requested person to successfully vault the hurdle needed. I agree with the assessment made by counsel for Latvia that these reports are somewhat 'scant' so far as detail is concerned and, in effect, do little more than provide 'headlines only'.
>
> 83. The threshold to be vaulted by the requested person is a high one. Once again this court has to bear in mind that extradition requests are based on the presumption of good faith and absent cogent and compelling evidence to the contrary it is to be expected that the requesting State will not only be aware of its Convention obligations but that it will abide by them.
>
> 84. Nothing that I have seen or heard during the course of these proceedings persuades me otherwise. Accordingly, this challenge must fail."

15. In the Second Appellant's case, DJ Zani made brief reference to the decision in *Konusenko*, saying that it was not binding but that he had taken it into account.

16. In respect of Article 8 ECHR, DJ Zani identified the factors that weighed against and in favour of ordering extradition in each case. He concluded that extradition would not be a disproportionate interference with either Appellant's right to respect for private and family life.

Grant of permission to appeal

17. In granting permission to appeal, Nicola Davies LJ and Julian Knowles J considered that it was reasonably arguable that the District Judge had failed to grapple with, or analyse, the CPT report, or the decision in *Konusenko*, or other key material, and had thereby failed to follow the guidance in *Aranyosi and Caldarau* [2016] QB 921. The Court requested from the Respondent further evidence, assurances and/or guarantees which were directed to ensuring that the Appellants would not be detained in conditions that would breach the prohibition on inhuman or degrading treatment. The Court sought:

> "a) identification of the prison at which each appellant will be detained upon arrival and/or be held in pre-trial custody and/or serve his sentence of imprisonment if extradited;
>
> b) an assurance that neither appellant will be transferred to the Grīva section of Daugavgrīva Prison;
>
> c) details of the current numbers of prisoners detained in the relevant section of each prison;
>
> d) details of the staffing levels at the relevant section of each prison to which each appellant, if extradited, would be detained;
>
> e) an assurance that the conditions at the relevant section of each prison in terms of:
>
> i) prisoner numbers;
>
> ii) staffing levels;
>
> iii) inter-prisoner violence;
>
> iv) out of cell activities;
>
> would not breach the rights of either appellant pursuant to article 3 ECHR;
>
> f) an assurance of, and details of, the monitoring which will take place to ensure compliance with the appellants' article 3 rights as set out in (e) above;
>
> g) evidence of the measures being taken in the relevant section of each prison by the appropriate authority to prevent the spread of Covid-19."

The evidence as to prison conditions in Latvia

18. As DJ Zani observed, in *Brazuks v Latvia* [2014] EWHC 1021 (Admin) this Court emphatically rejected appeals against extradition to Latvia on the basis that prison conditions in Latvia give rise to a real risk of inhuman or degrading treatment – see *per* Collins J at [27]: "a general attack on Latvian prisons could not possibly succeed."

19. The principal evidence relied on by the Appellants at the time of the hearing before DJ Zani in support of a different decision was the CPT report. That report was based on visits that were carried out in 2016, two years after the decision in *Brazuks*. The Executive Summary records that the CPT had received very good co-operation from both the national authorities and the staff at the establishments that were visited. It was "pleased to note" that the minimum standard of living space per prisoner in multiple-occupancy cells had been raised to $4m^2$. This standard was, with some exceptions, observed in all the establishments that had been visited. The prison population had decreased. There had been no recent allegations of physical ill-treatment of inmates by staff, but inter-prisoner violence remained a problem at three prisons.

Recommendations were made to address that issue, including the increase of staffing levels at those prisons. In contrast to two institutions where it remarked on generally good conditions of detention, it said:

> "…most of the prisoner accommodation areas in the Grīva Section of Daugavgrīva Prison were in an advanced state of dilapidation (for example, crumbling walls, badly worn and sometimes even rotten floors, decrepit furniture, etc.) and severely affected by humidity due to the absence of a ventilation system. Further, many cells had very limited access to natural light, and the in-cell sanitary facilities in a large number of cells were in an appalling state of hygiene."

20. The body of the report stated:

> "47. Material conditions of detention were generally good at the Daugavpils Section of Daugavgrīva Prison, which had recently undergone major refurbishment. Prisoner accommodation was provided in adequately-sized cells for two to eight persons; cells generally had sufficient access to natural light and good artificial lighting, and were suitably equipped (including with a toilet facility and a call bell), clean and well-ventilated. However, the in-cell toilets were not fully partitioned in multiple-occupancy cells. Steps should be taken to remedy this deficiency.
>
> In contrast, most of the prisoner accommodation areas in the prison's Grīva Section were in an advanced state of dilapidation (e.g., crumbling walls, badly worn and sometimes even rotten floors, decrepit furniture, etc.) and severely affected by humidity due to the absence of a ventilation system. It is also a matter of concern that many cells had very limited access to natural light.
>
> Moreover, the in-cell sanitary facilities in a large number of cells were in an appalling state of hygiene. One of the very few positive points was that the minimum standard of $4m^2$ of living space per prisoner was observed throughout the establishment (prisoners being accommodated in cells for two to 15 inmates).
>
> 48. At the end of the visit, the delegation made it clear to the Latvian authorities that, in its view, the above-described conditions of detention in the Grīva Section of Daugavgrīva Prison could be considered to be inhuman and degrading and called upon the authorities to carry out a comprehensive review of those conditions as a matter of priority. The delegation requested the Latvian authorities to provide, by 30 September 2016, a detailed action plan (including a timetable) setting out how the existing shortcomings would be remedied, through extensive refurbishment, reconstruction or other means."

21. The Latvian authorities were asked to provide, by 30 September 2016, an action plan setting out how the shortcomings would be remedied. The authorities responded within

the requested timescale. They indicated that a programme of rolling refurbishment would be undertaken at the Grīva Section of Daugavgrīva Prison ("the Grīva Section") from 2017 to 2020 and that there was a plan to close it in the long term. The CPT recommended immediate measures to ensure an acceptable level of hygiene (and, in particular, in-cell sanitary facilities).

22. On 29 June 2017 the Latvian Government provided comments on the CPT report. In respect of the criticisms of the sanitary facilities in the Grīva Section it said:

> "Administration of Daugavgrīva prison received task to develop and submit to the Administration for agreeing a working plan for partition the toilet facilities from the other cell. The planned term for completing the requisite works is set for the end of 2018.
>
> During the period from April 2016 until March 2017, the following repairs were conducted in Grīva division of Daugavgrīva prison:
>
> - Rebuilding punishment solitary cell, thus providing toilet partition and improving the privacy of the prisoner;
>
> – Installation of closet toilets and change of water supply and sewage in all cells of building No.1 (No.1-21), cells No. 70 and 72 of building No.4 and cells No. 73-80 and No.97 of building No.5.
>
> From March 2017, it is planned to install closet toilets and change water supply and sewage in cells of buildings No.2 and 3. If additional funding will be allocated, then, following the working plan for Daugavgrīva prison in 2017 confirmed by the Administration, redecoration will be conducted in cells of buildings No.1 and 5 of Grīva department."

23. In *R v Konusenko* (transcript of judgment, 18 January 2019) the Recorder of Belfast, HHJ McFarland, discharged a European Arrest Warrant issued by a Latvian judicial authority. The context is that another judge (in a judgment that has not been provided to us) had determined that there was a real risk of the requested person being detained in inhuman or degrading prison conditions in Latvia. An assurance was sought that the requested person would not be detained in the Grīva section. The requested assurance was not given, but general reassurance was provided as to the legal requirements that were in place. This response stated:

> "…during year 2018 in the imprisonment institutions (including Grīva unit of Daugavgrīva prison and Riga Central Prison) the repair works are [ongoing to ensure for] imprisoned persons the conditions compatible with the provisions of the European prison regulations."

24. That is a reference to the European Prison Rules 2006 which impose detailed requirements (for example that accommodation meets the requirements of health and hygiene, with prisoners having ready access to sanitary facilities that are hygienic and

respect privacy – see rules 18.1 and 19.3) that go far beyond the basic prohibition on inhuman and degrading treatment.

25. Notwithstanding this response, HHJ McFarland declined to "revisit" the earlier decision as to the existence of a real risk. He concluded that that risk had not been assuaged:

> "The reassurance that was given… does not go far enough. It certainly does state in general terms, improvements and minimum standards however, it does not specifically say that these standards are present in the Grīva Unit or Grīva Section. And when the Latvian authorities were asked specifically to confirm the position, and they could have done it on one of two ways; they could either have confirmed that Grīva conditions were appropriate or secondly, that the requested person would not be housed in Grīva. And for whatever reason, they have been unable to give that assurance to this court."

26. On 21 November 2019 the UN CAT met to conclude its consideration of the 2016 CPT report. It indicated that it remained concerned about the detention conditions in some facilities, including the Grīva Section, and said that information on reconstruction works that were ongoing in that facility would be appreciated. The record of the meeting records:

> "On the situation in the Giva Section of the Daugavgriva Prison and the Central Prison of Riga, delegates pointed out that relevant laws had been amended recently. They outlined the norms related to residential areas of prisons. They notably stipulated that the residential area for one detainee may not be less than four square meters."

27. There were follow-up questions by Committee Members in which the Latvian delegation was thanked for its responses, but none of the follow-up questions raised any further concern about the Grīva Section.

28. In December 2019 the CPT made concluding observations on its 2016 report. It welcomed the replies that had been provided by the Latvian authorities to the concerns that it had raised. It nonetheless remained concerned that:

> "[t]he conditions of detention in places of deprivation of liberty continue to fall short of international standards, including with regard to material conditions such as hygiene, sanitation, humidity, ventilation and access to natural light, and substandard conditions persist in the Griva section of Daugavgriva prison, which has the status of historic monument."

29. It recommended that the Latvian authorities should:

> "Continue to renovate all places of detention in need of repair with a view to improving their infrastructure and material conditions, and ensure that they are adapted to the needs of

> persons with disabilities, especially those with reduced mobility."

30. On 21 August 2020 the Respondent provided information in response to the requests made by the Divisional Court in this case (see paragraph 17 above). It said that the Appellants would, "at first", be placed in "an Investigation Prison Section of the Riga Central Prison." After 10 days the First Appellant would move to a closed prison which would be selected by reference to criteria such as medical, security, prevention of crime issues and vacancies. In the Second Appellant's case the response appears to proceed under the misapprehension that both EAWs were still live (whereas the first had been discharged). It said any transfer would depend on the decision of the court. There are nine places of detention, including the Daugavgrīva prison, and so it was not possible to confirm "unequivocally" that neither Appellant would at any time be transferred to that prison. In respect of the request for confirmation that the places of detention would not breach the requirements of Article 3 ECHR, the response was that "not a single place of detention has reached the maximum number of the accommodated imprisoned persons" and that in all institutions the living space available for a prisoner would be not less than $4m^2$. It added:

> "…All prisoners' living quarters are equipped with sanitary facilities, which are either demarcated from the rest of the cell or are located in a separate room altogether, ensuring the right of prisoners to privacy while they are visiting the sanitary facilities, and also there is provided a sufficient amount of ventilation, artificial light and, during the cold periods, there is also provided sufficient heating so that the temperature in the premises would stay above +18°C.
>
> All prisoners' living quarters are equipped with a sink and water faucet, thereby ensuring constant water availability that is also used for drinking purposes. The prisoners' living quarters are also equipped with beds, a table, chairs, and there are arranged places were prisoners can store their personal belongings.
>
> Each prisoner is provided with an individual sleeping place, and each one receives his own bedding (mattress, pillow, half-wool blanket) and a set of bed linen (pillowcase, two sheets), and 2 towels that are replaced by clean ones at least once every seven days. At least once per month prisoners are able to hand over their cloths for laundry.
>
> Each prisoner receives a warm meal three times a day, which ensures normal functioning of the body's vital functions, and each prisoner once a month receives detergents and personal care products (toothpaste, soap, toilet paper)."

31. The Respondent provided detail about the health care regime (which included the provision of both primary and secondary health care), the systems in place to address "inter-prisoner violence", the provision made for education and work, and the out of cell activities that are made available. In response to a further question asked, the Respondent confirmed that this information related to all prisons. It indicated that not

a single place of detention had reached its population capacity. These responses can be taken as encompassing the Grīva Section.

32. In respect of the request for details of the monitoring in place so as to ensure compliance with the Appellants' Article 3 rights, the Respondent identified the requirements of Article 3 and the legal provisions in place in Latvia to secure compliance with Article 3. These included a provision of the Constitution of Latvia which prohibits inhuman or degrading treatment or punishment. It also provided details of findings of the Senate of the Supreme Court of Latvia to the effect that conditions of imprisonment must not exceed the threshold of suffering that inevitably follows from the fact of imprisonment. It added:

> "In accordance with the internal regulatory enactments of the Administration, the supervision of imprisoned persons in places of detention is a set of measures implemented by prison officials for the purpose of ensuring the compliance with the prison internal rules. When performing the supervision of the imprisoned persons, the official shall perform the duties specified in his or her job description.
>
> The Administration would like to draw your attention towards the fact that in places of detention in the Republic of Latvia the officials performing the supervision of the imprisoned persons strictly comply with the valid regulatory enactments and ethical standards in order to prevent any physical suffering, humiliation or discrimination of the imprisoned person."

33. In addition to these points, there is a Prisons Ombudsman in place in Latvia. The documentation we have been shown indicates that the Ombudsman (which in 2018 had 51 members of staff) is able independently to pursue issues concerning prison conditions, that the Ombudsman's recommendations are taken seriously (almost 90% of the recommendations made in 2019 were implemented) and the Ombudsman could bring cases before the Constitutional Court (which it had done on numerous occasions). There are, however, suggestions that the Ombudsman operates under tight budgetary constraints. Its estimated budget for 2020 was just under €1.5M.

34. In response to a further question as to the work that had been done since June 2017 to address the findings of the CPT report in respect of the Grīva section at Daugavgrīva prison, the Respondent said:

> "In 2017 – repaired the cells of 5th wing of Grīva section of Daugavgrīva prison.
>
> In 2018 – repaired the shower facilities of 1st, 2nd, and 3rd wing of Grīva section of Daugavgrīva prison, repaired the roof of 10th and 11th unit.
>
> In 2019 – repaired 21… cell of 1st wing of Grīva section of Daugavgrīva prison."

35. The Appellants seek to adduce further evidence which was not available at the time of the hearing in the Magistrates' Court. We set out the detail of the most prominent parts of this evidence below (see paragraph 68). It includes evidence of the conditions imposed in response to the COVID pandemic, which is to the effect that, if extradited, the Appellants would be held in isolation for the first 14 days without access to lawyers and unable to communicate by phone or computer, and could not apply for bail. More generally the prison system in Latvia has adopted some restrictions on the extent of visits permitted and the nature and extent of leisure activities.

Legal framework

Extradition Act 2003

36. Sections 21, 21A and 27 of the Extradition Act 2003 provide, so far as is relevant here:

> **21 Person unlawfully at large: human rights**
>
> (1) If the judge is required to proceed under this section (by virtue of section 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
>
> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
>
> (3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.
>
> …
>
> **21A Person not convicted: human rights and proportionality**
>
> (1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide… —
>
> (a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;
>
> (b) whether the extradition would be disproportionate.
>
> (2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
>
> (3) These are the specified matters relating to proportionality-

(a) the seriousness of the conduct alleged to constitute the extradition offence;

(b) the likely penalty that would be imposed if D was found guilty of the extradition offence;

(c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.

(4) The judge must order D's discharge if the judge makes one or both of these decisions —

(a) that the extradition would not be compatible with the Convention rights;

(b) that the extradition would be disproportionate.

…

26 Appeal against extradition order

(1) If the appropriate judge orders a person's extradition under this Part, the person may appeal to the High Court against the order.

…

27 Court's powers on appeal under section 26

(1) On an appeal under section 26 the High Court may—

(a) allow the appeal;

(b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) order the person's discharge;

(b) quash the order for his extradition.

Article 3 ECHR: application to prison conditions

37. Article 3 ECHR prohibits torture or inhuman or degrading treatment or punishment. As is well known, treatment or punishment must meet a minimum level of severity before it will be regarded as inhuman or degrading. That level is fact sensitive. It will usually involve actual bodily injury or intense physical or mental suffering. Treatment may, however, be degrading even where it does not have these consequences, if it "humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance" – see *Pretty v United Kingdom* (2002) 35 EHRR 1 at [52].

38. In *Muršic v Croatia* (2017) 65 EHRR 1 the Grand Chamber of the European Court of Human Rights gave guidance on the circumstances in which prison conditions might amount to inhuman or degrading treatment. The applicant in that case had spent 50 days in a multi-person cell with personal space of less than $3m^2$ as well as several non-consecutive periods in a cell in which he was allocated between 3 and $4m^2$ (contrary to domestic law which required that each prisoner be afforded 4 m^2 of personal space). The Court held that this amounted to inhuman or degrading treatment. More generally, it held that is not possible to specify a minimum floor-space that should be allocated to a prisoner because that depends on other factors relating to the overall conditions. However, if the personal space allocated to a prisoner is less than $3m^2$ there is a presumption of a violation of article 3, which will normally only be rebutted by the overall and cumulative effect of identified compensatory factors. If the available space is more than $3m^2$ but less than $4m^2$ then there will normally be a violation of Article 3 if the conditions of detention are otherwise inappropriate having regard to access to outdoor exercise, natural light or air, ventilation, temperature, private toilet facilities and basic sanitary and hygiene arrangements.

Approach to Article 3 ECHR/Article 4 Charter of Fundamental Rights in extradition cases

39. Article 3 ECHR is in materially identical terms, and (in this context) has a materially identical ambit, to Article 4 of the Charter of Fundamental Rights of the European Union.

40. The starting point, in assessing a complaint that extradition would be incompatible with Article 3, is the principle of "mutual trust" that Latvia will, as an EU Member State, comply with Article 4 of the Charter – see *Dorobantu v Romania* case C-128/18 at [46]-[49]. This is the "cornerstone" of the European Arrest Warrant System. It means that it must be presumed that Latvia will comply with Article 3 ECHR/Article 4 of the Charter. This presumption can, in exceptional circumstances, be rebutted. However, an exacting test must be satisfied before the presumption is capable of being rebutted. What is required is information "that is objective, reliable, specific and properly updated… that demonstrates that there are deficiencies…" (see *Aranyosi and Caldararu* C-404/15 at [89]). Such information "may be obtained from, inter alia, judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN" (again, see *Aranyosi* at [89]).

41. In *Aranyosi* the Court of Justice of the European Union prescribed a three stage test to be applied before concluding that there is a real risk that extradition will result in inhuman or degrading treatment. The three stages were summarised in *Mohammed v Comarca de Lisoa Oeste, Portugal* [2017] EWHC 3237 (Admin) *per* Beatson LJ at [15]:

> **Stage 1** of the procedure involves determining whether there is such a risk by assessing objective, reliable, specific, and properly updated evidence…. Where such a risk is identified, the court is required to proceed to stage 2.
>
> **Stage 2** requires the executing judicial authority to make a specific assessment of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk. To that end it must request the issuing authority to provide as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained.
>
> **Stage 3** deals with the position after the information is provided. If in the light of that, and of any other available information, the executing authority finds that, for the individual concerned, there is a real risk of inhuman or degrading treatment, execution of the warrant must be postponed but cannot be abandoned.

Submissions

42. The Appellants argue that the District Judge should have found that there is a real risk that the Appellants would be subjected to inhuman and degrading treatment if they are extradited to Latvia. They say that the District Judge erred in failing to follow the staged approach identified in *Aranyosi* and that if he had done so he would have been bound

to discharge the Appellants. The approach in *Aranyosi* has now been adopted following the grant of permission to appeal. The response to the questions falls well short of addressing the Court's concerns. The three aspects of prison conditions mainly relied on are (1) the physical state of cells in the Grīva Section; in particular, the Respondent has conspicuously failed to provide an assurance that the Appellants will not be detained in the Grīva Section which the CPT had identified as "inhuman and degrading"; (2) inter-prisoner violence exacerbated by inadequate staffing levels; and (3) restrictions introduced in response to the COVID pandemic. There therefore remains a real risk that Article 3 will be breached if the Appellants are extradited. The Appellants should therefore be discharged.

43. The Respondent stresses the importance of the obligation of "mutual trust." It contends that the Appellants have not identified information "that is objective, reliable, specific and properly updated" so as to rebut the presumption that Latvia will comply with the obligations imposed by Article 4 of the Charter and Article 3 ECHR. As to the need for the obligation to be "specific" the Respondent contends that this means that it must relate to the particular prison where it has been shown the Appellants will be located, which is here the Riga Central Prison. The conditions in other prisons are irrelevant. In any event, the concerns that had been expressed in the 2016 report have not been "properly updated" so as to show that the Appellants will be at real risk of inhuman or degrading treatment. When all of the evidence is considered in its totality, it has not been demonstrated that there is a real risk that Article 3 will be breached. In particular, the CPT report has to be taken together with the Government's response. The material falls "far short of showing that there are systemic failings such that incarceration in *any* establishment across the prison estate would amount to a real risk to the [Appellants]."

Discussion

Relevance of conditions in Grīva section

44. The Appellants will initially be located in Riga Central Prison. After a short period they may be moved to another prison. The Respondent has expressly acknowledged that it cannot rule out the possibility that the Appellants will be located to the Grīva Section. That is located in Daugavgrīva Prison (which is on the outskirts of Riga) and is one of fewer than 10 prisons at which the Appellants could be incarcerated. There is therefore a real prospect that the Appellants will be located in the Grīva Section. If the conditions in Grīva Section amount to inhuman and degrading treatment then it axiomatically follows that the Appellants would, if extradited, be at a real risk of suffering such treatment. In those circumstances it seems to us highly relevant to assess whether the conditions in Grīva Section amount to inhuman and degrading treatment.

45. Mr Hall QC on behalf of the Respondent argues, however, that we are prevented from undertaking such an assessment. His argument is that it is only permissible to enquire into those prisons where it has been positively shown that a person will in fact be located. He relies on the decision of the Court of Justice of the European Union in *Dorobantu* [2020] 1 WLR 2485. In that case, at [54], the Court said that the mere existence of evidence of general deficiencies in prison conditions does not necessarily imply that in a specific case the individual concerned will be subjected to inhuman or degrading treatment. That is obviously right. It then said, at [55], that it is necessary to determine whether in the particular circumstances of the case, there are substantial grounds for believing that there is a real risk of inhuman or degrading treatment because

of the conditions for his detention envisaged in the issuing member State. Again, that reflects the decision in *Aranyosi* and is obviously right. It follows that there is no general obligation to enquire into "the general conditions of detention in all the prisons in the issuing member state in which the individual concerned might be detained" (see at [64]). This would be "clearly excessive" (see at [65]).

46. At [66] the Court then said:

> "Consequently, in view of the mutual trust that must exist between member states, on which the European arrest warrant system is based, and taking account, in particular, of the time limits set by article 17 of Framework Decision 2002/584 for the adoption of a final decision on the execution of a European arrest warrant by the executing judicial authorities, those authorities are solely required to assess the conditions of detention in the prisons in which, according to the information available to them, it is actually intended that the person concerned will be detained, including on a temporary or transitional basis (*ML* , para 87)." [Emphasis added].

47. This shows that where information has been provided as to the location where the person concerned will be detained, then it is only necessary to consider the conditions of detention in those prisons (including the prisons in which the person will be detained on a temporary or transitional basis). There would be no purpose in undertaking a general enquiry into the conditions of all prisons where the location of detention is known.

48. It would, however, be giving this passage too narrow and literalistic a reading, devoid of any underlying principle, to infer that where the requesting State has been unable to specify the precise prison where the person will be incarcerated, the sending Court is permitted to ignore authoritative evidence of inhuman and degrading conditions in a prison where the prisoner might well be sent. Where, as here, significant and specific concerns have been raised about the conditions in a particular prison, and there is a real risk that the person will be sent to that prison, then it is necessary to determine whether it has been shown that those conditions involve inhuman or degrading treatment. If they do, then it will be a breach of Article 3 ECHR to order extradition, because there would be substantial grounds for believing that it would result in a real risk of inhuman and degrading treatment.

49. Accordingly, we reject the submission that we should not consider the conditions in the Grīva Section.

Has it been shown that the conditions in the Grīva Section amount to inhuman and degrading treatment?

50. This question is not answered by either (1) the CPT's observation that the conditions at the Grīva section at Daugavgrīva prison "could be considered to be inhuman and degrading", or (2) the decision of the Divisional Court to grant permission to appeal and to seek information from the Judicial Authority, or (3) the decision in *Konusenko*.

51. As to the CPT's observation, that is expressed in subjunctive terms. That is a deliberate reflection of its function. It is not the CPT's function to adjudicate on claimed breaches of Article 3 ECHR. Rather, it is a "preventive monitoring body" which "does not entail pronouncing on whether a certain situation amounts to inhuman or degrading treatment or punishment within the meaning of Article 3, ECHR" – see "Living space per prisoner in prison establishments: CPT standards" CPT/Inf (2015) 44 of 15 December 2015 (quoted in *Muršic v Croatia* (2017) 65 EHRR 1 at [52]). We therefore consider that the District Judge was right to conclude that the CPT's observation was "not determinative of the issue". Moreover, the observation was made in the context of a visit in 2016, and was not repeated in the subsequent exchanges between 2016 and 2019.

52. The Divisional Court was addressing the threshold question for the grant of permission to appeal, rather than the final question of whether extradition would be incompatible with article 3. It held that the issues raised in the CPT report are directly relevant to the issue of whether a real risk exists of inhuman or degrading treatment, not that it showed that there was a real risk of such treatment.

53. The decision in *Konusenko* was simply to the effect that the response of the Judicial Authority in that case had not assuaged the real risk that had already been found to exist in an earlier decision (which is not before us). The Recorder of Belfast decided not to re-open the findings made in that earlier decision, and based his assessment on the narrow question of whether the responses of the Latvian authorities in that case had adequately addressed those findings. We have been provided with additional evidence, including the CPT material from 2019 (which postdates the decision of the Recorder of Belfast), and the responses of the Latvian authorities to the questions asked by this Court.

54. The issue for the District Judge, and in turn for us, is whether, there is a real risk that the Appellants will be subject to inhuman or degrading treatment. We consider that question first by reference to all of the evidence that has been placed before us, including material that was not before the District Judge, before then formally considering whether to admit that material as fresh evidence.

55. The starting point is the required presumption of "mutual trust" that Latvia will comply with the prohibition on inhuman and degrading treatment. The material that is capable of displacing this presumption includes "judgments of international courts, such as judgments of the ECtHR, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN" (see paragraph 40 above).

56. We have not been shown any judgment of any international court (see paragraph 68(4) below for a single decision of the European Court of Human Rights that was relied on by the Appellants), or any Latvian Court, which suggests that the Appellants would face a real risk of inhuman or degrading treatment if they are extradited. Nor is there any judgment of a UK court to that effect: the decision in *Brazuks* strongly goes the other way. The only judgment of any court of any other country that we have been shown and which finds that there is a risk is the decision in *Konusenko* which we have addressed.

57. The CPT report is a document "produced by [a body] of the Council of Europe." Evidence of the CPT is, in principle, capable of identifying inhuman or degrading

conditions in prisons. The District Judge was right to regard the CPT report as "mixed": it was a balanced report which raised some areas of concern, but also highlighted areas of improvement. It shows that in 2016 the Grīva Section had crumbling walls, badly worn/rotten floors, decrepit furniture, lack of ventilation and consequential humidity and in-cell sanitation that was in an appalling state of hygiene.

58. We do not consider that poorly maintained furniture or building fabric comes close to the minimum threshold required to establish a breach of Article 3, except possibly in an extreme case where the result is a failure to provide basic shelter and warmth. Save for that type of extreme case, such conditions are not likely to produce intense physical or mental suffering or to arouse "feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance."

59. The CPT report shows that there was, in 2016, real concern about the state of hygiene in at least some cells in the Grīva Section. We accept that a lack of hygiene in respect of in-cell sanitation may, in certain contexts, reach the Article 3 threshold. That is more likely to be the case where the lack of hygiene is truly appalling, where it persists over a prolonged period of time, and where alternative sanitation arrangements are not available (eg on the wing).

60. The response of the Latvian authorities is, however, instructive. They co-operated and engaged with the CPT and provided a constructive response. They committed to addressing the problems that had arisen. The action plan submitted to the CPT after their visit, the response to the CPT Report and the subsequent response to the Court's questions all show that the problem has been addressed and remedial work undertaken. The main focus of the CPT's concern at the time of their visit that the cell conditions might be considered to entail a breach of Article 3 appears to have been the sanitary condition of the toilets. Substantial physical works have been carried out on the cells in the Grīva Section to improve those facilities by installation of closet toilets and new water and sewage works, as well as other works of repair. There is no evidence to contradict the information provided by the Respondent so as to suggest that the problems identified in 2016 have not been addressed. The continuing concerns that were expressed by the CAT in 2019 do not appear to be based on any new visit to Grīva Section and do not in terms suggest that appropriate remedial work had not been, or was not being, undertaken. They also pre-date the information that was provided to the Court. The overall approach of the Respondent strongly suggests that it is committed to ensuring that prison conditions are compatible with the requirements of the ECHR and the Charter, and, indeed, the more exacting requirements of the European Prison Rules.

61. There may well be continuing difficulties in the Grīva Section. It is in a building which is difficult to maintain and it is planned for closure. However, it has not been shown that those difficulties give rise to a real risk of inhuman or degrading treatment. Moreover, it is far from certain that either Appellant will in fact be located there. In all the circumstances, we do not accept that extradition is incompatible with Article 3 by reference to the physical state of the cells in the Grīva Section.

Inter-prisoner violence

62. The First Appellant had been subject to an assault by another prisoner (see paragraph 4 above). DJ Zani considered that that did not demonstrate a real risk of treatment in breach of Article 3:

> "The following points arise:
>
> (i) The incident occurred over 5 years ago.
>
> (ii) According to MD, when he returned from hospital, the prison authorities moved him to another cell with two other inmates with whom MD had no difficulty.
>
> (iii) It does not appear that MD was particularly targeted, in that, the reason he gives for the assault is that he was unable to give them the money which they demanded from him. Any other prisoner in his situation is likely to have been the victim of similar actions.
>
> (iii) MD makes no complaint of any other incident while he was held on remand.
>
> (iv) It is not known whether any of the inmates who are said to have assaulted him are still in the Latvian prison estate, or if so, where he is/ they are presently located.
>
> (v) The Latvian prison authorities placed MD in a different cell when he returned from hospital. They were unable to investigate the incident in view of the fact that MD maintained that he had fallen from the top bunk."

63. This reasoning is unimpeachable. In relation to the District Judge's finding that the incident occurred 5 years ago, Mr Perry QC points out that the First Appellant says that he is still suffering from psychological symptoms. That is not, however, particularly relevant to the risk of further assaults. The fact that the assault took place so long ago, together with the other factors identified by the District Judge, amply justified his conclusion.

64. Leaving aside this isolated assault, there is considerable evidence, including from the CPT and the Ombudsman, of a more wide-ranging problem of inter-prisoner assaults. There is evidence of an established hierarchy amongst prisoners in Latvia, which increases the risk of such violence. There is also evidence of unfilled vacancies for prison staff in Latvia, including at Riga Central Prison. Again, we accept that this potentially increases the risk of inter-prisoner violence. Nevertheless, the evidence (including in particular the response to the Court's questions) also shows that the Latvian authorities are seeking to address the problem. All information about inter-prisoner violence is registered, regardless of whether a complaint is made. This material is forwarded to an investigator who decides whether to pursue criminal proceedings. In allocating prisoners to accommodation consideration is given to the need to reduce the

risk of inter-prisoner violence. The Ombudsman is able to identify and pursue any shortcomings in the response of the prison authorities.

65. The evidence falls far short of that which would be required to rebut the presumption that Latvia complies with its obligations under Article 3 ECHR – see the conclusion on more extreme facts in *Bartulis v Pabevezys Regional Court (Lithuania)* [2019] EWHC 3504 (Admin) at [121]-[122].

Covid

66. Mr Perry QC contended that the 14-day quarantine restriction that is in place in response to the current covid-emergency is, in itself, a breach of Article 3 ECHR. He says that the restrictions are disproportionate insofar as they prohibit telephone or video calls, or consideration of a grant of bail.

67. We do not underestimate the effect on a prisoner of solitary confinement without any ability to receive visits or to speak to family or friends. In some contexts (and particularly where imposed for a prolonged period of time and without good reason) such conditions are highly likely to result in feelings of "fear, anguish or inferiority capable of breaking an individual's moral and physical resistance". Here, however, the conditions are imposed for a clear and limited and relatively short period of time, and they are imposed for a clear and justified reason – namely to limit the transmission of coronavirus. The prohibition on telephone and video calls limits the circulation of prisoners and reduces the risk that a telephone or computer may become a vehicle for virus transmission. It is in the Appellants' interests (if they are otherwise extradited) that such steps are taken so that they, as well as others, are protected from the risk of an outbreak of coronavirus within a closed prison. The evidence shows that the Latvian authorities have, so far, had a large measure of success in protecting prisoners and prison staff from infection. We do not think that the measures that have been imposed come close to breaching the prohibition on inhuman and degrading treatment.

Additional evidence

68. As to the additional evidence, which was not before the District Judge, and on which the Appellants seek to rely:

(1) An article on the Baltic News Network website on 12 April 2019 reports the Latvian Minister for Justice as saying that during 2018, €8,000 had been paid in compensation to inmates living in unacceptable conditions. We do not consider this evidence assists on the question of whether the Appellants will be exposed to inhuman or degrading treatment. The "unacceptable conditions" are not specified. It is not possible to know whether they amounted to inhuman or degrading conditions. There is no detail about the cases, and it cannot be inferred that the Appellants would be at risk of enduring similar conditions (whatever they might have been).

(2) In the same article the Minister said that the construction of a new prison has been outstanding since 2009 and that if "Latvia does not make up its mind" on the construction of the prison it would be "at risk of ending up on the list of countries that torture prison inmates." Again, we do not consider that this advances matters. It shows a Justice Minister advocating for the construction of a prison, but does not

provide the detail necessary to demonstrate a real risk of inhuman or degrading treatment.

(3) Two 2018 Amnesty International reports say that the "justice system is overburdened… Prisons continue to suffer from overcrowding, and abuses of detainees and prisoners by law enforcement agents has been reported", and "… prison conditions continue to be poor". Again, however, there is no detail. This provides some general support for the contention that there are continuing problems, but it falls far short of the evidence required to demonstrate a real risk that the Appellants will be subject to inhuman or degrading treatment.

(4) The decision of the European Court of Human Rights in *Abele v Latvia* (applications 60429/12 and 72760/12, judgment 5 October 2017) in which a breach of Article 3 ECHR was found in respect of prison conditions in Latvia. The case is, however, highly fact specific. The court did not make any general findings that the conditions in Latvian prisons were inhuman or degrading. The applicant was deaf and mute since birth and his sign language was poor. He had been detained for over a year (in 2012-2013) in a cell where he had just 2.74m^2 of personal space. For 2 further years he was in a cell where his personal space ranged from 3.09 to 3.28m^2. He was unable to communicate with other inmates or engage in any meaningful activities due to his disability. For a substantial period of time he could only leave his cell once a day for a walk and once a week for a shower. He was only provided with a hearing aid after he had spent 4 years in custody. Unsurprisingly, in the light of *Muršic*, the Court found that this breached Article 3. It is clear that the Latvian authorities have taken steps to improve prison conditions since 2013. The evidence before us shows that all prisoners have at least 4m^2 of personal space.

Conclusions on article 3 claims

69. It has not been shown that the Appellants are at real risk of suffering inhuman or degrading treatment if they are extradited to Latvia. The appeal on this ground is therefore dismissed.

Article 8 claim of the First Appellant

70. The First Appellant argues that the District Judge wrongly thought that his son lived in Latvia (he in fact lives in Romania) and that he diminished the seriousness of the assault by saying (correctly) that it had occurred 5 years earlier, without recognising that it was having a continuing material psychological impact, and that he considered that there were 2 years and 6 months of the sentence left to serve (whereas there were around 20 months left to serve). In addition, the District Judge thought (in the absence of clear evidence to the contrary) that the First Appellant was not on any form of medication. Subsequently, evidence has shown that he had been prescribed 15mg Mirtazapine daily, increasing to 30mg, to help him sleep.

71. We do not consider that any of these points show that the District Judge erred in rejecting the First Appellant's Article 8 claim. The relative lack of contact between the First Appellant and his son is such that this was, on any view, not a weighty factor in the balancing exercise. The fact that he lives in Romania does not materially increase the impact on family life (if any) that extradition will have. As matters stand, the First Appellant and his son live in different countries. That will remain the case if the First

Appellant is extradited. It is a neutral factor. Ultimately, Mr Perry QC accepted as much.

72. So far as the psychological impact of the assault is concerned, that falls short of a post-traumatic stress disorder (although we accept that there is some evidence of continuing sequelae, including the evidence of medication that was not before the District Judge). A clinical psychologist has reported that he has expressed "reasonable and clear apprehension about returning to the prison environment and conditions in Latvia" and that he will find it "very stressful and depressing" to leave the UK. However, there is no evidence that the First Appellant's condition will be materially and significantly aggravated by extradition.

73. The fact that there was about 10 months less time to serve than the District Judge had thought does not significantly diminish the public interest in his extradition and also means that the impact of extradition on the First Appellant's private or family life is commensurately less extensive. It does not invalidate the District Judge's assessment of the proportionality balance.

74. The District Judge's conclusion that extradition would not have a disproportionate impact on the First Appellant's right to respect for private and family life was correct. He has only limited family life in the United Kingdom. The impact on his private and family life will be for a limited period of time (5 months). We accept that the conditions in prison in Latvia are likely to be severe, not least because of the restrictions imposed to address the COVID emergency. Those restrictions will impact on the First Appellant's residual private life because, for a period of 14 days, he will not be able to have contact with family or friends.

75. As against that, aside from the strong general interest in complying with extradition requests, the First Appellant has been convicted of serious offending, he is a repeat offender, he is a fugitive from justice and he did not comply with the terms of his probation.

76. Mr Perry submitted that the effect of extradition would be that he would lose the opportunity to qualify for early release which the Latvian system would have afforded him had he served all the sentence in Latvia. That is, however, the consequence of him being a fugitive and is of no significant weight in the proportionality exercise.

Article 8/proportionality claim of Second Appellant

77. Again, we do not consider that the decision of the District Judge can be impugned on the evidence that was before him. The District Judge took account of the first European Arrest Warrant (which had not by then been discharged because at the time of the extradition order which he made, the Second Appellant had only been on remand for some 5 months, and there remained some 4 ½ months of his Latvian sentence to serve). He was therefore dealing with both a conviction and accusation warrant.

78. There are three factors which have changed since the decision of the District Judge. The first is that the first EAW has been discharged because the whole of the 9½ month sentence imposed for those offences has been served by time on remand in this country. The Article 8 and section 21A assessment therefore now falls to be made by reference

solely to the accusation warrant in relation to the alleged offending at the kiosk in October 2015.

79. Secondly, the Second Appellant has spent a period of some 9 months being subject to an electronically monitored curfew. Mr Hall submitted that this is of no consequence, pointing out that the curfew ran through the night, from 9pm, when the Second Appellant could have been expected to be at home, and submitted that there is no evidence that it is having any real impact on his private life. We disagree. The curfew was a significant restriction on the liberty of the Second Appellant over a prolonged period of time. The Second Appellant says that he has been told that in the event of conviction he is likely to be sentenced to a community sentence or a fine. The Respondent has not challenged that prognosis, which does not seem to us to be unrealistic in the light of the nature of the offences and the amount of time for which the Second Appellant has been subject to a curfew. On any view the likelihood is that if any custodial sentence were to be imposed it would be short, and likely shorter than the 4½ months which under our domestic legislation would be treated as served by the time he has spent on electronically monitored curfew. The unchallenged evidence was that such credit would not be afforded in Latvia.

80. The third factor is the effect of the COVID restrictions, and in particular the effect of complete isolation in prison for the first 14 days on return. This will result in the Second Appellant spending 14 days in custody, without any opportunity to seek bail, notwithstanding that he would otherwise be a strong candidate for bail.

81. We consider that these new considerations call for a reappraisal of the balance between the factors in favour of extradition and those against extradition. The factors identified by the District Judge in favour of extradition remain in the balance, including the public interest in the UK upholding its treaty obligations and not being seen as a safe haven for those who are sought to stand trial abroad, but the weight of the public interest in securing the Second Appellant's extradition is now attenuated by his service of the sentence for which he was sought under the first EAW, the time he has spent on curfew, and the likely nature of the penalty that will be imposed if convicted in Latvia. Moreover, the offences in question "cannot properly be described as grave", as Nicola Davies LJ observed when granting permission. Although they cannot be considered to amount to minor theft within the meaning of Crim PD 50A.3, such that extradition should (in the absence of exceptional circumstances) be considered disproportionate for the purpose of section 21A(4)(b) of the Act, they are not far outside that bracket.

82. As against that, the Second Appellant has a family life in this country which he has established by living and working here since 2015. He has a partner in the UK. They live together and plan to marry. He helps his partner to look after her disabled mother. The conditions that he will face if he is extradited will involve his being denied the opportunity to pursue what might otherwise have been a meritorious application for bail, and instead being held in isolation for 14 days. Taken together those amount to very significant interferences with his Article 8 rights.

83. We consider that the point now has been reached where extradition would be a disproportionate interference with the Second Appellant's right to respect for private and family life.

Application to adduce fresh evidence

84. We allow the application to adduce fresh evidence insofar as it relates to the restrictions that are in place in Latvian prisons as a result of COVID, and the discharge of the first EAW issued in respect of the Second Appellant and his subsequent release on bail conditions which included an electronically monitored curfew. That information concerns events after the hearing before the District Judge, and is capable of being (and has been) "decisive". We reject the application insofar as it relates to all other evidence which we do not consider is capable of being (and has not been) "decisive".

Outcome

85. The First Appellant's appeal is dismissed. The Second Appellant's appeal is dismissed on the article 3 ECHR ground, but it is allowed on the Article 8 ECHR and section 21A ground. The Second Appellant will therefore be discharged and the order for his extradition will be quashed.