



Neutral Citation Number: [2024] EWHC 406 (Admin)

Case No: AC-2022-LON-002652

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/02/2024

Before

MR JUSTICE SWIFT

Between

VICTORIA STUMBRE

Appellant

-and-

**PROSECUTOR GENERAL'S OFFICE OF THE
REPUBLIC OF LITHUANIA**

Respondent

Graeme Hall (instructed by **Taylor Rose MW, Solicitors**) for the **Appellant**
Jonathan Swain (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 5 December 2023

Approved Judgment

This judgment was handed down remotely at 10.00am on 27 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWIFT

A. Introduction

1. This appeal is against an extradition order made by District Judge Bristow on 21 September 2022. The extradition order rests on an arrest warrant issued by the Respondent Judicial Authority (the Prosecutor General of the Republic of Lithuania – “the Prosecutor General”) on 6 August 2021, which was certified by the National Crime Agency on 30 October 2021. The warrant is an accusation warrant. It requests that Miss Stumbre be surrendered to face trial on thirty-six offences, summarised by the District Judge as follows.

“All of the offences are alleged to have been committed between 31 January 2017 and 23 December 2018. Of the thirty-six offences:

- (a) thirteen are said to be offences of swindling contrary to paragraph 1 of Article 182 of the Criminal Code of Lithuania. Such offences may be punished with a custodial sentence of up to three years;
- (b) five are said to be offences of swindling contrary to paragraph 2 of Article 182 of the Criminal Code of Lithuania. Such offences may be punished with a custodial sentence of up to eight years;
- (c) one is said to be an offence of attempted swindling contrary to Article 22 and paragraph 2 of Article 182 of the Criminal Code of Lithuania. Such an offence may be punished with a custodial sentence of up to eight years;
- (d) three are said to be offences of swindling contrary to paragraph 3 of Article 182 of the Criminal Code of Lithuania. Such offences may be punished by community service or a fine by restriction of liberty by arrest;
- (e) one is said to be an offence of influencing a witness, victim, expert, specialist or translator contrary to Article 233 of the Criminal Code of Lithuania. Such an offence may be punished with a custodial sentence of up to two years;
- (f) two are said to be offences of forgery of a document or possession of a forged document contrary to paragraph 1 of Article 300 of the Criminal Code of Lithuania. Such offences may be punished with a custodial sentence of up to three year; and
- (g) eleven are said to be of offences of forgery of a document or possession of a forged document Contrary to paragraph 3 of Article 300 of the Criminal Code of Lithuania. Such offences

may be punished with a custodial sentence of up to six years.”

2. This warrant is the second to be issued by the Prosecutor General for Ms Stumbre’s surrender. The first warrant was issued on 13 June 2018 (“the first extradition request”). That warrant, also an accusation warrant, concerned 21 of the offences which are now the subject of the warrant issued in 2021. An extradition order was made on 8 February 2019. An appeal against that order was dismissed on 6 November 2019 (*AB v Lithuanian Judicial Authority* [2019] EWHC 2991 (Admin), Supperstone J). An application to reopen the appeal was refused by Johnson J on 28 October 2020. Ms Stumbre was surrendered pursuant to the extradition order on 13 November 2020.

3. What happened next is explained in the judgment of the District Judge.

“8. On 15 November 2020 the Requested Person was released from temporary detention by imposing less severe measures of coercion. Her Lithuanian passport numbered 23727935 was seized. She was obliged to report periodically to the Lithuanian police. The measures were imposed so that she could not leave Lithuania and to ensure her presence in the criminal proceedings. The Requested Person was also interrogated regarding the commission of the offences indicated in the [warrant] on 15 November 2020.

9. The Requested Person was interrogated again regarding the commission of the offences indicated in the [warrant] on 18 November 2020 and 25 November 2020.

10. On 03 December 2020 the Requested Person made a request to the Vilnius Regional Prosecutor’s Office that she be permitted to return to the UK to her children. The Vilnius Regional Prosecutor’s Office refused her request on 21 December 2020.

11. On 23 December 2020 the Vilnius Regional Prosecutor’s Office received a complaint from the Requested Person’s counsel about 21 December 2020 decision.

12. On 08 January 2021 the Superior Prosecutor dismissed the complaint, and the Requested Person was refused permission to return to the UK.

13. On 12 January 2021 the Requested Person went to the Migration Department. She was provided with a Lithuanian passport numbered 25429825. There is a factual dispute about the circumstances of her visit to the Migration Department on 12 January 2021 and I shall return to that issues below.

14. The Requested Person’s counsel applied to the Pre-trial Judge to annul the Superior Prosecutor’s decision of 08 January

2021. The Pre-trial Judge of the Vilnius City District Court dismissed the application on 25 January 2021.

15. On 12 July 2021 the Requested Person was recognised in the Lithuania as a suspect by a prosecutor’s decision.

16. On 12 July 2021 the Vilnius Regional Prosecutor’s Office received a notification of 09 July 2021 that the Requested Person had departed Lithuania for the UK. She had violated the measures of coercion. On the same date, the Requested Person was notified about the criminal prosecution for the offences indicated in the [warrant] by a prosecutor’s letter sent to the email address she specified. A summons requiring her to appear before the officer conducting the investigation was also sent to her. She was told to return to Lithuania immediately and was notified, if she did not return, that the imposition of detention would be considered.

17. On 14 July 2021 the Requested Person sent to the officer conducting the pre-trial investigation an email which contained extracts from the birth certificates of her four children.

18. On 14 July 2021 the Vilnius City District Court rendered a ruling imposing detention as a measure of coercion on the Requested Person.”

The warrant that is the premise for the present proceedings was then issued on the 6 August 2021.

4. In the proceedings before Supperstone J on the first extradition request, the submission for Ms Stumbre was that extradition would be a disproportionate interference with her article 8 rights and her children’s article 8 rights. At the time of the first extradition request Ms Stumbre had three children born on 22 January 2004, 30 September 2008, and 15 November 2013, respectively. Ms Stumbre’s fourth child was born on 27 February 2020.
5. At the time of the hearing before the District Judge on the first extradition request, the evidence was that were Ms Stumbre to be extradited, her mother, Ms Stumbriene, would care for the children. By the time of the hearing before Supperstone J, Ms Stumbre’s mother had provided a further witness statement to the effect she was both unable and unwilling to look after the children. It was then submitted for Ms Stumbre that were she to be extradited it was likely the children would be taken into care by local authority social services. In his judgment Supperstone J dealt with this new evidence as follows

“25. The Respondent submits the Applicant, having lost in the court below, now seeks to make a new case in the appeal in an attempt to reach a different outcome.

26. I agree with this observation. The evidence of [Ms Stumbriene] was unequivocal (see para 6 above). It was repeated to professional persons (see para 7 above) and to the court in the clearest terms. It is plain, as one would expect, that careful consideration was given by her as to whether, having regard to her personal circumstances, she would be able to take on this heavy responsibility.

27. I do not consider that the reasons that are now given for her change of mind adequately explain why she is not now prepared to do what, after mature consideration over a lengthy period of time, she had confirmed to the DJ that she would do.

28. The first reason given by [Ms Stumbriene] as to why she is not able to look after her three grandchildren is, she says, that her health has deteriorated. She says she now suffers from hip pain, that she had seen a doctor but that she needs to go back “next week” and may need a hip replacement surgery. In her evidence at the hearing (and in her earlier statements) she made no reference to hip pain. There was no medical evidence confirming this new condition.

29. The second reason relates to her “very low income”. She seems to suggest that her job cleaning caravans by the sea during the summer season was “really affected by hip pain”. Again, no mention was made of this previously. In any event, benefits will be provided, as the DJ noted (see para 9 above), to enable her financially to look after her grandchildren.

30. As for the third reason, namely her private life in King's Lynn with her new partner, she says nothing that was not known at the time she said that she would look after her grandchildren in the event of her daughter's extradition. She appreciated then that she would have to move to London to look after them. She points to no change in circumstances. I agree with Ms Hinton that no reason has been provided as to why she might be less committed to take over the children's care than she was previously.”

He also addressed further evidence filed after the hearing, concerning whether Ms Stumbre's mother would care for the children.

“40. There is nothing in the new evidence before me at the hearing or the further new evidence to suggest that if the choice was between M looking after her grandchildren or them going into foster care she would do anything other than what she had said repeatedly she would do, namely take care of them.”

Supperstone J's conclusion on the appeal was as follows.

“55. In my judgment the DJ conducted the balancing exercise as required, having proper regard to the factors favouring extradition and those militating against it. The DJ's decision, on the evidence before her, was not, in my view, even arguably wrong.

56. Having regard to the new evidence, specifically the second addendum witness statement of [Ms Stumbriene] dated 29 July 2019 I will grant permission to appeal. However, for the reasons I have given I am satisfied that the DJ would have reached the same conclusion if the new evidence had been before her, and would not have been wrong to have done so. [Ms Stumbriene] has failed to explain satisfactorily why she will not now care for her grandchildren when previously she stated unequivocally that she would. I do not consider that any of the other new evidence relating to B (or the Applicant's other two children) would have led to a different outcome before the DJ if that evidence had been before her.

57. The only new evidence that may be material, not in terms of the order for the Applicant's extradition but in relation to the subsequent care of her children, is her pregnancy. On return to Lithuania she will be on bail. There is therefore now the option (at least until trial and thereafter subject to the outcome and sentence in the event of conviction) for her three children to live with her in Lithuania (see paras 41-42 above).”

6. In her evidence in the present proceedings on 2021 extradition request, Ms Stumbre explained why she absconded from Lithuania.

“10. I was taken to Lithuania on 13 November 2020 and two days later I was released on conditional bail. I was subject to the following conditions: to reside in Lithuania, to report to a police station Vilnius once a week. The reporting condition was later varied to reporting by phone due to the pandemic.

11. During the first two weeks of my surrender I was interviewed twice by the prosecutor. I fully cooperated, I provided a detailed account accepting my responsibility and gave all the information I had.

12. When I was told that the case is still at the investigation stage and they are not ready to proceed further, and that it would take several months to complete the investigation and for the matter to be sent to court; I instructed my lawyer to make an application to allow me to go back to England to be with my children.

13. It was impossible for me to stay in Lithuania for longer for several reasons; my mother could not cope with looking after the children on her own and I had no financial means to support myself in Lithuania. I was still receiving Universal Credit but I was aware of my obligation to inform the authorities in England about the change of my circumstance within two months.

...

22. Every time I spoke to my mother, she would complain how difficult it was for her, and she always said that she may have to resort to calling social services.

23. The last straw was when [J] got ill and had fever. [J] has always had breathing issues. He had difficulty breathing and would not eat anything. He had to be taken to hospital. My mother said that if she could no longer cope and if I did not come back immediately she would call the police and ask them to take the children into the care of social services.

24. My mother refused to go to hospital with [J] it was [my eldest daughter] at the time she was only 16, who accompanied him to the hospital.

25. I was so worried that the children will be placed into social care as I could see that my mother was not able to look after them anymore. There were only two options: either me going back to Lithuania or the children going into social care. I chose the former.

26. In fact, [J] had to have an operation to remove his tonsils and adenoids, which was done when I got back to England.

27. My mother caused my sons a big trauma when I was in Lithuania she raised her hand at [T] and [K] and was verbally abusive towards them. Her partner who came once every two weeks, drank alcohol all the time whilst in the house. My mother abuses alcohol as well.”

Ms Stumbre’s evidence went on to state that while she was in Lithuania she made two applications to vary her bail conditions to permit her to travel to England to look after her children; that she had sent an email to the prosecutor explaining the circumstances; that she informed the Lithuanian Prosecutor of her address in the UK; and that when she was informed by her solicitor that the second extradition request had been made, she made arrangements through her solicitor voluntarily to surrender.

7. At the extradition hearing before the District Judge on the present extradition request the application of Article 8 was, again, a primary issue. It is the only issue in this appeal against the extradition order. The focus of the submission concerns what will happen to Ms Stumbre’s three younger children if she is extradited. The children are now aged

15 (T), 10 (K) and 3 (J). The position of Ms Stumbre's oldest child is less material. She is now 20 years old and lives independently of her siblings.

8. As to the care of T, K, and J the District Judge made the following findings on the evidence before him.

“49. Ms Stumbriene looked after the Requested Person's four children after she was extradited to Lithuania in November 2020. The Requested Person now claims that Ms Stumbriene will not be willing, able, or suitable to provide care in her absence. The Judicial Authority submits that there is strong likelihood that Ms Stumbriene would provide care again despite the Requested Person's claim to the contrary.

50. In her proof of evidence dated 18 November 2021, Ms Stumbriene states that she is no longer capable of looking after her grandchildren. She continues that she “does not want to look after them” and that she is “not in a position to take such a responsibility” on herself. Ms Stumbriene appeared by live television link due to mobility issues. She told me in evidence-in-chief that she took her stress out on her grandchildren when she was looking after them. She accepted in evidence-in-chief, and after I had warned her that she did not have to answer Mr Hall's question that sought to elicit the answer she gave, that she slapped [T] because she lost control. I asked her directly, whether she would look after the children, if the Requested person were extradited. She replied “I just can't do it. I require care” She also told me in re-examination that she last saw the children on 27 February 2021 when [J] celebrated his first birthday. She told me that her relationship with her grandchildren had become “more and more distant”. She confirmed that if the children were taken into foster care she would maintain telephone contact to see how they are doing.

51. I found Ms Stumbriene to be a reliable witness. She was candid and answered some questions which might incriminate her even after being warned by me that she did not have to do so. I have reminded myself that in the previous extradition proceedings she did, ultimately, look after the children even having asserted that she could not do so. I am forced to the conclusion, and I find, that Ms Stumbriene is unwilling, unable and unsuitable to look after the children. She has expressly stated her unwillingness. She has physical and mental health conditions to which I shall refer later. This make her unable. She has used violence against [T] when she lost control. This maker her unsuitable.

Who could care for the children in the Requested Person's absence?

52. I accept, and I find, that the only option for [T] and [K] would be foster care. [J's], father occasionally sees him and pays child maintenance of £228.18 per month. I have not received evidence about whether [he] would be willing and able to care for [J]. The Requested Person refused to provide to Mr Jack Rooney ("Mr Rooney"), the social worker who completed the Family Assessment of East Sussex County Council with contact information for [J's] father. She asserted that he wanted nothing to do with the assessment. In the absence of substantive evidence to the contrary, I find that there is a possibility that [J] might be cared for by his father. He has contact [J] and pays child maintenance. There is, at least, a relationship there.

54. If [J's] father is unwilling or unable to care for him, then the only remaining option is foster care.

55. I accept that the children could not accompany the Requested Person to Lithuania. She will now, in my judgment, almost inevitably be remanded into custody on return to Lithuania. Indeed, the [warrant] records that "a ruling to impose detention as the measure of coercion" has been imposed there. I do not have evidence to conclude that appropriate care could be provided in Lithuania either by family, friends or authorities there. It would not be in the best interest of the children to depart the UK, the country to which they have the greater experience.

Foster care in the UK

56. Mr Rooney confirms that foster care would be available for the children in the UK. He confirms that it is by no means guaranteed that the children will be able to remain together. He confirms that it is "likely" that the children would be separated from each other."

9. In reaching his conclusion that extradition would not amount to a disproportionate interference of with article 8 rights, the District Judge correctly directed himself by reference to the judgments in *Norris v Government of United States of America (No.2)* [2010] 2 AC 487, *HH v Deputy Prosecutor of Italian Republic Genoa* [2013] 1 AC 338, and *Polish Judicial Authority v Celinski* [2016] 1 WLR 551. He then continued as follows.

"90. I conclude that I must apply the following principles when considering the best interest of the children. The best interests of the children are a paramount, or determinative, consideration since the effect of extradition, at least in [T's] and [K's] case, will be to separate them from their parents. The children's best interests must be considered first. The best interests of the children may be outweighed by countervailing factors and countervailing reasons of considerable force will be required to displace them. The children are not to be blamed for

any conduct on the part of the Requested Person. Her conduct is not a factor that devalues their best interests.

91. I find that it is in [T's], [K's] and [J's] best interests not to be separated from the Requested Person and not to suffer the consequences described by Dr Wain. I find that it would not be in their best interests to go into foster care or to be separated from each other. This factor carries significant weight in the balancing exercise.

92. I find that the following factors favour extradition:

- a. the public interest in ensuring extradition arrangements are honoured is very high, so too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice;
- b. the offences described in the [warrant] are serious;
- c. the offences described in the [warrant] are numerous;
- d. the offences are relatively recent;
- e. though this is an accusation warrant, the Requested Person does admit the offences which makes it very likely she actually falls to be sentenced for the offences;
- f. a significant sentence can be imposed for the offences; and
- g. the Requested Person is a fugitive who fled the Lithuania to avoid justice.

93. I find that the following factors militate against extradition:

- a. there will be interference with the Requested Person's family life. She will be separated from her children;
- b. there will be an interference with her private life in the UK, a private life (and family life) of around 10 years and 05 months duration;
- c. the Requested Person has not been convicted of offences in the UK or internationally;
- d. there will be interference with the private and family life of her children. They will be separated from the Requested Person; and

e. it is not in [T's], [K's] and [J's] best interests to live without the Requested Person, to suffer the consequences described by Dr Wain or to go into foster care and be separated from each other.

94. The cumulative weight of the factors I have identified in favour of extradition is very high. As Lady Hale explained before Celinski, in HH (and which I refer to here as an earlier statement of the principle set out again in Celinski):

“There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; and that there should be no safe havens to which either can flee in the belief that they will not be sent back.”

95. There is a particular factor in the Requested Person's case that adds significant weight again to the public interest in extradition, her behaviour after extradition was first ordered. The Requested Person disregarded the extradition order made in this jurisdiction on 08 February 2019. She totally disobeyed bail conditions imposed in Lithuania to prevent her leaving the jurisdiction. Not only that, but she used deceit at the Migration Department to obtain the passport to facilitate her departure. Part of the explanation for her behaviour might have been her concern for her children, and this may temper the contempt in which her behaviour should be held, as would her cooperation with the UK authorities in relation to the [warrant], but another part of her reason for fleeing will have been to avoid justice in Lithuania. In my judgment, it would be contrary to the interests of justice to permit the Requested Person to benefit from such behaviour. The UK would very much be seen, in such circumstances, as a state willing to accept fugitives from justice.

96. The factors I have identified which tend to militate against extradition also carry weight. The weight to be attached to them is, in my judgment, diminished for a number of reasons.

97. It is not in [T's], [K's] and [J's] best interests to be separated from their mother the Requested Person. In [J's] case, it may be, that his father will provide care. It is not in their interests to suffer the considerable consequences identified by Dr Wain. It is tragic, that they might have to go into care and, very possibly, be separated from each other. The children cannot and must not be blamed for their mother's behaviour. Responsibility for the children's predicament lies squarely with the Requested Person. She has put them in this position by committing the offences alleged in the AW, which she apparently admits, and by her behaviour after the first

extradition. The children will be cared for in her absence. They will receive foster care. They are all in, a least relatively good physical health. They will continue to receive medical care in the UK. They will be entitled to social services support and medical treatment for their mental health in the event of deterioration following extradition. Doubtless, support needs would be identified and provided through their educational establishments and social services who will have the duty of care. Their grandmother, Ms Stumbriene, will keep, at least, in telephone contact and will provide a watchful eye over the care they are receiving from social services. Their sister, Ms Stumbraite will remain in the UK.

...

99. The Requested Person is a national of Lithuania. She would be returning to the country of her nationality. She has great experience of the society and culture of Lithuania. She has demonstrated considerable personal fortitude in departing Lithuania and entering the UK in defiance of bail conditions. She is in satisfactory physical and mental health. She can withstand the rigours of extradition and custody. She has not been convicted of offences in the UK but she would not have wished to draw attention to herself.

100. I have not found this balancing exercise to be straightforward. I have anxiously considered the best interest of the children in the full knowledge of what the likely serious consequences of extradition will be for them. I have reminded myself that the Requested Person only became a fugitive in respect of this [warrant], that part of her reason for fleeing Lithuania might be her determination to care for her children and that she cooperated with the UK authorities in relation to the [warrant].

101. I have carefully considered the respective weight to be attributed to both sets of factors. I have carefully balanced both sets of factors together. I am satisfied that greater weight attaches to the factors in favour of extradition. The factors against extradition have weight but, in my judgement, less weight than the factors in favour of extraction, even when [T's], [K's], and [J's] best interests are taken into account as a paramount consideration. There are contravening reasons of very significant force to displace the children's best interests. The scales fall in favour of extradition.

102. The extradition of the Requested Person to the Lithuania is a proportionate interference with her right to respect for her private and family life and that of her children.”

10. The submissions in support of the appeal raise two specific criticisms of the District Judge's consideration of article 8 to the present case, and also contend that, looked at overall, the conclusion that extradition would not amount to a disproportionate inference with article 8 rights is wrong.

B. Decision

11. The approach to be taken by the court where an appeal, as this appeal does, challenges a judge's decision on the application of a qualified Convention right such as article 8, is well-known. It was summarised by the Divisional Court in *Celinski*: see per Lord Thomas CJ at paragraphs 18 – 24. As part of his summary, Lord Thomas CJ set out the following which is Lord Neuberger's analysis in his judgment in *Re B (a child) (care proceedings: threshold criteria)* [2013] 1 WLR 1911.

“93. There is a danger in over-analysis, but I would add this. An appellate judge may conclude that the trial judge's conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupported. The appeal must be dismissed if the appellate judge's view is in category (i) to (iv) and allowed if it is in category (vi) or (vii).

94. As to category (iv), there will be a number of cases where an appellate court may think that there is no right answer, in the sense that reasonable judges could differ in their conclusions. As with many evaluative assessments, cases raising an issue on proportionality will include those where the answer is in a grey area, as well as those where the answer is in a black or a white area. An appellate court is much less likely to conclude that category (iv) applies in cases where the trial judge's decision was not based on his assessment of the witnesses' reliability or likely future conduct. So far as category (v) is concerned, the appellate judge should think very carefully about the benefit the trial judge had in seeing the witnesses and hearing the evidence, which are factors whose significance depends on the particular case. However, if, after such anxious consideration, an appellate judge adheres to her view that the trial judge's decision was wrong, then I think that she should allow the appeal.”

12. In the present case the submission for Ms Stumbre falls into three parts: the first two parts are that the District Judge's conclusion rested on two specific errors of approach; the third part is that looked at overall, the conclusion on the application of article 8 in the circumstances of this case was the wrong conclusion.
13. The first part of the submission is that the District Judge's conclusion on article 8 rests on a contradiction. At paragraphs 59 – 61 the District Judge set out and accepted the opinion of a clinical psychologist, Dr Helen Wain, on the consequences of Ms

Stumbre's extradition for the children T, K, and J. Dr Wain's conclusion was that the effect on each of T and K would be severe and the effect on J would be exceptionally severe. The premise of that opinion was that each of T, K, and J would go into local authority care and, in all likelihood, would be separated.

14. The submission is that these conclusions are contradicted at paragraph 97 of the judgment. At this point in the judgment the District Judge is evaluating the weight attaching to the matters listed at paragraph 93 of the judgment, the matters that weighed in favour of the conclusion that extradition would be a disproportionate interference with article 8 rights. The paragraph 93 list included the impact of extradition on T, K, and J (set out above, at paragraph 9 of this judgment). The immediate context for this is at paragraph 96 of the District Judge's judgment, his statement that the weight attaching to the paragraph 93 matters "... is ... diminished for a number of reasons". Paragraph 97 then states that if Ms Stumbre is surrendered the children: (a) will receive care in foster care and have access to all usual medical and social services support; and (b) may retain contact with their older sister and their grandmother. But, contends the submission, these matters describe nothing that can be properly regarded as mitigating the conclusions stated by Dr Wain since the factual premise for Dr Wain's conclusions was that T, K, and J would be looked after as foster children.
15. I do not consider this criticism to be a valid criticism. Paragraph 97 is not addressing Dr Wain's conclusions, which are referred to at sub-paragraph (e) of the paragraph 93 list. Rather, the points at paragraph 97 are directed to the point at paragraph 93(d), the fact that T, K, and J would be separated from their mother. Looking at the run of paragraphs between paragraph 96 and paragraph 102, the District Judge does not suggest there is any matter that would diminish the consequences for T, K, and J of being in care. That is borne out both by paragraph 97, the second sentence of which refers back to and does not question Dr Wain's opinion, and by paragraph 101 where the District Judge draws together the various strands of his reasoning.
16. It is also important to consider the judgment in the round and resist temptation to apply an unrealistic degree of scrutiny. Looking at this judgment in this way it is apparent that the District Judge fully accepted Dr Wain's evidence and attached significant weight to it.
17. The second part of the submission is that the District Judge left out of account the possibility that Ms Stumbre could be prosecuted in England. I disagree. At the extradition hearing the possibility that Ms Stumbre could be prosecuted in England rather than Lithuania was canvassed for the purposes of the submission that extradition was barred on grounds of forum (i.e. section 11(1)(j) and 19B of the Extradition Act 2003). The District Judge rejected that submission. His reasoning on that submission included the following.

"76. I am satisfied that it is desirable and practicable that all prosecutions relating to the alleged extradition offences should take place in one jurisdiction, Lithuania. The witnesses and co-defendants are in Lithuania. Indeed, the Requested Person's co-defendants have already been prosecuted there. Again, whilst I have accepted that evidence could lawfully be given by persons in this jurisdiction, it is, in my judgment, clear that it would be far more practicable for it to be given in Lithuania. Those

persons are in the territory. Evidence could be given without the use of technology I wished. The proceeding can be conducted in the Lithuanian language, which all in the court could readily understand, without the need for interpretation: section 19B(3)(f) of the 2003 Act. The factor weighs in favour of extradition.

77. I have found that the Requested Person has a private and family life in the UK to the extent set out above. Accordingly, I accept that the Requested Person has significant connections to the UK: section 19B(3)(g) of the 2003 Act. This factor carries significant weight in favour of the extradition not taking place.

78. I have carefully considered all of the factors set out in section 19B(3) of the 2003 Act. I have carefully considered the weight to be attributed to each of the factors. The cumulative weight of the factors in favour of the extradition taking place is significant. In particular of the interests of any victims lend significant weight to that side of the scales as does the delay which would result from the proceeding in the UK rather than Lithuania. The most significant of the factors against extradition is the Requested Person's connections with the UK as represented by her private and family life. This a weighty factor. I have carefully balanced both sets of factors together. I am satisfied that the greater weight attaches to the factors in favour of extradition taking place. The scales fall in favour of extradition taking place. I decide, having regard to the specified matters relating to the interests of justice (and only those matters) that the extradition should take place. I do not decide that the extradition should not take place."

Thus, the District Judge's conclusion on the forum bar took full account of Ms Stumbre's family life in the United Kingdom. The reference to "family life in the UK to the extent set out above" must be to the part of the judgment headed "Private and Family Life" which included paragraphs 59 to 61, the paragraphs that address the position of each of T, K, and J, and Dr Wain's evidence concerning each of them. It is immaterial that these matters were not repeated in the later part of the judgment concerning article 8. On the facts of this case the forum submission and the article 8 submission overlapped. It was sufficient that for the purposes of the decision on forum, the article 8 interests of Ms Stumbre and her children were expressly weighed in the balance.

18. For these reasons I do not consider that any material weight attaches to either of the specific matters relied on in support of article 8 submission. This leaves the cumulative submission; that looked at overall, the conclusion that Ms Stumbre's extradition would not involve a disproportionate interference with article 8 rights was wrong. This is the central point in this appeal. Like the District Judge, I consider this to be a difficult issue.

19. The District Judge clearly did give significant weight to the interests of the children (see for example his reasoning at paragraphs 100 to 101, set out above at paragraph 9 of this judgment), and he was right to do so. The circumstances of this case are particularly acute. If Ms Stumbre is extradited, the evidence is that the children, T, K, J will go into local authority care; it is likely they will be separated. The consequences of that for them are likely to be very severe. Dr Wain's evidence on this is very clear. The extent of the interference with article 8 rights consequent on the extradition will be very significant indeed. The circumstances of this case are of a different order to the overwhelming majority of article 8-based claims raised in extradition hearings and extradition appeals.
20. However, the matters weighing in favour of justifying that severe interference with article 8 rights are also very strong. The offending alleged against Ms Stumbre is very serious. There are thirty-six allegations on the warrant. The District Judge ordered extradition in respect of thirty-three of those charges. Taking the allegations in the round, Ms Stumbre is alleged to have been involved in a very serious fraud. The total value of the fraud alleged is over €250,000. Ms Stumbre acted as part of a group, but the allegations against her are none the less serious for that. Further, in the course of the investigation that took place after she was first extradited to Lithuania she admitted her guilt in respect of twenty-one of the allegations on the present warrant (those twenty-one allegations being allegations contained in the first extradition warrant). This significantly adds to the public interest that in this case the extradition arrangements should take their ordinary course.
21. The next matter is that Ms Stumbre absconded from Lithuania following the first extradition. She was subject to a condition imposed by the Lithuanian authorities to remain in Lithuania, but broke that condition. At the extradition hearing this time round it was agreed that Ms Stumbre was a fugitive: see the District Judge's judgment at paragraph 40. Moreover, the District Judge made findings as to how Ms Stumbre dishonestly obtained travel documents to leave Lithuania. At paragraph 46 he said this.

“46. I am sure, and I find, that the Requested Person went to the Migration Department on 12 January 2021 and lied about having lost her passport. I am sure that she did so in order to deceive the Migration Department into issuing the new passport dated 12 January 2021, numbered 25429825 in the name of Agne Stumbre. I am sure that she then used that dishonestly obtained passport to facilitate her departure from Lithuania towards the end of January 2021. At most that was 19 days after the passport was issued. The proximity of the dates leads me to be sure that the deceitful obtaining of the passport and her departure from Lithuania are directly related.”

These matters too, significantly add to the already strong public interest in this case that effect should be given to the extradition arrangements the United Kingdom has made with the European Union states.

22. In his submissions for Ms Stumbre, Mr Hall referred me to the judgments of the Supreme Court in *HH v Deputy Prosecutor of the Italian Republic Genoa* (above). In

that case, the Supreme Court considered appeals concerning the application of article 8 in extradition proceedings in circumstances similar to those in this case. The judgments in *HH* emphasise the weight attaching, as a matter of course, to giving effect to extradition arrangements that, but for an article 8 issue, would require surrender of a requested person. So far as concerns the approach required in cases where extradition would severely affect dependent children, Lord Judge started by analogy to English sentencing practice before turning to the extradition context.

“126. Like the sentencing decision following conviction, the extradition process arises in the context of alleged or proved criminal conduct. The sentencing decision is similarly based on statute. By section 142 of the Criminal Justice Act 2003 (“the 2003 Act”) the court “must have regard” to a number of wide ranging and sometimes inconsistent specific purposes of sentencing. ... By section 166 any matters which the sentencing court considers relevant to mitigation may be taken into account. It is at this stage of the sentencing process that, among other matters of mitigation, the interests of the defendant's child or children, and any of his or her or their dependants and indeed his or her health, and the health and wellbeing of members of the family usually fall to be considered. ... From this it follows that even if the custody threshold is passed, matters of mitigation may nevertheless result in the imposition of a non-custodial sentence: and even if a custodial sentence must be imposed, it may be reduced for the same reasons. ...

127. Long before the enactment of the Human rights Act 1998, sentencing courts had taken account of the likely impact of a custodial sentence on children dependent on the defendant, not in his or her interests, but in the interests of the children. ...

...

129. Recent definitive guidelines issued by the Sentencing Council in accordance with the Coroners and Justice Act 2009 are entirely consistent. Thus, in the Assault Guideline, taking effect on 13 June 2011, and again in the Drug Offences Guideline, taking effect on 29 February 2012, among other features the defendant's responsibility as the sole or primary carer for a dependant or dependants is expressly included as potential mitigation.

130. The principle therefore is well established, and habitually applied in practice. However, it should not obscure the reality that in the overwhelming majority of cases when the criminal is convicted and sentenced for offences which merit a custodial sentence, the innocent members of his family suffer as a result of his crimes. Although custodial sentences are sometimes avoided altogether where the level of seriousness is relatively minor and are sometimes reduced by reference to the

needs of dependent children, care must also be taken to ensure that considerations like these do not produce injustice or disparity as between co-defendants with different family commitments, or undermine the thrust towards desirable consistency of approach to sentencing decisions on a national basis ... As Hughes LJ has recently explained in *R v Boakye* [2013] 1 Cr App R(S) 6, para 32:

“The position of children in a defendant's family may indeed be relevant, but it will be rare that their interests can prevail against society's plain interest in the proper enforcement of the criminal law. The more serious the offence, generally the less likely it is that they can possibly do so.”

This observation mirrors observations to the same effect in *Norris* in the context of extradition.

131. The effect of this analysis is to underline that the starting point in the sentencing decision involves an evaluation of the seriousness of the crime or crimes and the criminality of the offender who committed them or participated in their commission and a balanced assessment of the countless variety of aggravating and mitigating features which almost invariably arise in each case. ...

132. The extradition process involves the proper fulfilment of our international obligations rather than domestic sentencing principles. So far as the interests of dependent children are concerned, perhaps the crucial difference between extradition and imprisonment in our own sentencing structures is that extradition involves the removal of a parent or parents out of the jurisdiction and the service of any sentence abroad, whereas, to the extent that with prison overcrowding the prison authorities can manage it, the family links of the defendants are firmly in mind when decisions are made about the establishment where the sentence should be served. Nevertheless, for the reasons explained in *Norris* the fulfilment of our international obligations remains an imperative. ... When resistance to extradition is advanced, as in effect it is in each of these appeals, on the basis of the article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence: any other approach would be inconsistent with the principles of international comity. At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration or the level of sentences or the arrangements for prisoner release which we are informed are likely to operate in

the country seeking extradition. It certainly does not follow that extradition should be refused just because the sentencing court in this country would not order an immediate custodial sentence: however, it would become relevant to the decision if the interests of a child or children might tip the sentencing scale here so as to reduce what would otherwise be an immediate custodial sentence in favour of a non-custodial sentence (including a suspended sentence).”

This reasoning recognises that where the public interest in compliance with extradition arrangement is particularly strong, such as where the criminality alleged is serious and where the requested person is a fugitive, that public interest is capable of justifying even the most severe interference with article 8 rights, even when the holders of those rights are dependent children.

23. Returning to the circumstances of this case and applying the approach explained by Lord Neuberger in *Re B*, I do not consider the District Judge’s conclusion that the interference with article 8 rights consequent on Ms Stumbre’s extradition is justified, was a conclusion that is wrong. His conclusion, as finally explained in paragraphs 100 and 101 falls within Lord Neuberger’s category (iii). The consequences faced by the children are such that it is impossible not to entertain doubt as to the conclusion the District Judge reached. Those circumstances are heart-rending. Nevertheless, I am satisfied the conclusion the District Judge, reached following an obviously thorough and careful consideration of matters, is correct.
 24. For these reasons the appeal against the extradition order is dismissed.
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