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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION
(DIVISIONAL COURT)

IN THE MATTER OF THE EXTRADITION ACT 2003

ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF BELFAST

BETWEEN:

PROSECUTOR'S GENERAL OFFICE OF THE REPUBLIC OF LATVIA
Requesting State/Respondent

v

VENTIS KILGASTS
Requested Person/Appellant

Representation

APPELLANT: Mr Sean Devine, of counsel (instructed by Gillen & Co solicitors)
RESPONDENT: Ms Marie-Claire McDermott, of counsel (instructed by the Crown Solicitor)

Before: McCloskey LJ and Humphreys J

McCLOSKEY LJ (*delivering the judgment of the court*)

Preamble

The court has concluded that this appeal against the order of Belfast County Court authorising the surrender of the Appellant to Latvia must be dismissed. This conclusion is driven fundamentally by the lack of sufficient evidential foundation for the cornerstone of the Appellant's resistance to extradition, namely treatment

contrary to the inhuman and degrading treatment prohibition enshrined in Article 3 ECHR, contrary to section 6 of the Human Rights Act 1998 and section 21A of the Extradition Act 2003. This appeal has two particularly noteworthy features. First, based on the information available, this is the first judgment of the Northern Ireland High Court in an extradition appeal in which the post-Brexit arrangements apply. Second, it raises certain issues, essentially of a procedural kind, relating to the judicial role in the formulation and transmission of requests for further information from the court of the requested state to the relevant agency of the requesting state.

Introduction

[1] The parties to this appeal are the General Prosecutor's Office of Latvia (the "*requesting state*") and Ventis Kilgasts (the "*requested person/appellant*"). By its decision Belfast County Court ordered the appellant's surrender to the requesting state. The appellant appeals to this court, permission having been refused by the single judge, McFarland J. The hearing of this appeal was conducted on 26 July and 10 August 2022.

Factual Matrix

[2] In brief compass, the appellant is a national of the Republic of Latvia, aged 41 years. The European Arrest Warrant ("*EAW*"), which is dated 07 May 2021, seeks his surrender to the requesting state for the purpose of serving a sentence of 25 months imprisonment, imposed upon him in that jurisdiction on 24 December 2019 arising out of his convictions in respect of drugs offences which he had admitted. The EAW is, therefore, of the so-called "conviction" variety. It was executed on 19 July 2021 when the appellant was arrested. He has remained in custody ever since.

[3] The more detailed factual matrix, in tandem with the nomenclature, is agreed between the parties and is the following:

"Mr K": Mr Kilgasts, the Appellant.

"CPT": The Council of Europe Committee for the Prevention of Torture.

"EAW": European Arrest Warrant.

"HHJ": His Honour Judge …..

"NCA": National Crime Agency.

"RFFI": Request for further information

18.09.90 Mr K's date of birth

29.06.17	Publication of most recent CPT report concerning Latvia
10.09.18	Mr K commits offence of buying for further sale 25kg of marijuana
12.09.18	Mr K commits offence of selling €15 worth of cannabis
18.01.19	Judgment of HHJ McFarland in Latvia v Konusenko
25.04.19	RP convicted after trial for drugs offences 25 month sentence imposed
24.12.19	Sentence comes into effect
07.05.21	EAW issued
23.06.21	EAW certified by NCA
19.07.21	Mr K arrested under the EAW at home in Belfast Remanded in custody since (i.e. c. 50% stage of sentence)
01.11.21	Belfast County Court letter to RS
17.11.22	Response to letter
25.02.22	Mr K's new legal team came on record
10–22.05.22	Most recent visit of the CPT to Latvia (*Daugavgriva* was one of the 3 prisons visited)
20.05.22	Extradition Order made – HHJ Miller
27.05.22	Leave to appeal refused - McFarland J
06.06.22	Notice of Renewal of the Appeal filed

The Decision in Aronyosi

[4] As will become apparent, the decision of the Grand Chamber of the CJEU in *Aronyosi and Caldararu* Joined Cases C-404/15 and C-659/15 has been at the fulcrum of the Appellant's case from its inception. Certain aspects of the Framework Decision, the measure of EU law containing the legal rules to be applied in cases of this kind, provide the backdrop. In summary, within the ambit of one of the main objectives of the TEU namely the creation of an area of freedom, security and justice (sometimes described as the "justice pillar") there is a series of constituent principles. These were described by this court in *Michailovas v Lithuania* [2021] NIQB 60 at para [62], in these terms:

> "Fiscal (Case C-399/11) and Minister for Justice and Equality v Lanigan (Case C-237/15) at [36]." "The key principles which have been identified are those of a high level of mutual trust and confidence between EU Member States and mutual recognition. Recital (6) of the Preamble to the Framework Decision describes the latter principle as the "cornerstone" of judicial co-operation in criminal matters. Article 1(2) gives effect to this by providing that Member States are in principle obliged to execute an EAW: see, amongst other cases, Melloni …… (and) …Lanigan …"

[5] The framework of the decision in *Aronyosi* is further illuminated by para [63] of *Michailovas*:

> "While the duty of a requested state to give effect to the execution and surrender provisions of the Framework Decision is very much the norm, it is not absolute. This is so because of, firstly, recital (10) in the Preamble which states that the implementation of the EAW mechanism is capable of being suspended, but only in the event of serious and persistent breach by one of the Member States of the principles enshrined in Article 2 EU and in accordance with the procedure prescribed in Article 7 EU. Furthermore, the jurisprudence of the CJEU has recognised that limitations to the principles of mutual recognition and mutual trust and confidence may be appropriate in "exceptional circumstances": See Opinion 2/13 (EU:C:2014:2454) at [191]. The Charter of Fundamental Rights of the EU is another limiting measure. Article 1(3) of the Framework Decision provides, in substance, that its procedures and arrangements operate in the context of the unmodified obligation of Member States to respect fundamental rights contained in inter alia the Charter."

Thus, within the Framework Decision there is a series of principles and limitations which fall to be balanced.

[6] In *Aranyosi* the Grand Chamber addressed squarely the issue of the co- existence of these principles and limitations and the interface which they are capable of generating in certain instances. In the two conjoined preliminary references, the essential question raised was the duty of the requested state in any case where there is evidence that detention conditions in the requesting state are incompatible with fundamental rights, in particular Article 4 of the Charter (Article

3 ECHR). The answer supplied by the CJEU had its foundations in one specific provision of the Framework Decision, namely Article 15(2). This provides:

> "If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17."

This is supplemented by Article 15(3), which empowers the issuing judicial authority to at any time provide "*any additional useful information*" to the executing judicial authority.

[7] At para [65] of *Michailovas* one finds a convenient exposition of the several interlocking elements of what was decided in *Aranyosi*:

> "The following are the main tenets of the decision of the Grand Chamber:
>
> (i) There is, in substance, a presumption that all Member States comply with EU law and particularly the fundamental rights recognised by EU law, save in exceptional circumstances: see [78] and [82].
>
> (ii) There is a "*binding*" obligation on Member States to comply with the "*absolute*" provisions of Article 4 of the Charter: [84] – [85].
>
> (iii) "It follows that, where the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State … [it] is bound to assess the existence of that risk when it is called upon to decide on the surrender to the authorities of the issuing Member State of the individual sought by a European Arrest Warrant" [88].
>
> (iv) Where there is such evidence, the first task of the executing judicial authority is to consider "*information that is objective, reliable, specific and properly updated*" on the detention conditions prevailing in the requesting state: [89].
>
> (v) If, having performed this task, the executing judicial authority finds that there is a real risk in the foregoing terms, this cannot *per se* warrant a refusal to surrender the requested person: [91].
>
> (vi) Rather, where such a finding is made, a second task for the executing

judicial authority crystallises, namely to make "*a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State*": [92] – [94].

(vii) In performing this second task, the executing judicial authority "*must*" invoke Article 15(2) by requesting of the requesting state the provision of "all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State": [95] – [97].

(viii) *"If, in the light of the information provided pursuant to Article 15(2) … and any other information that may be available to the executing judicial authority, that authority finds that there exists, for the individual (concerned) …. a real risk of inhuman or degrading treatment … the execution of that warrant must be postponed but it cannot be abandoned":* [98].

At this stage, two possibilities arise. First, where the executing judicial authority, having considered all available information, discounts the existence of a real risk of a violation of Article 4 it must make a surrender decision: [103]. Second, "if the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end": [104]."

[8] *Aranyosi* proved to be the first of three successive decisions of importance of the CJEU in this discrete sphere. The second followed two years later, in *ML* [2018] EUECJC – 220/18PPU. At para [112] the court said the following in relation to assurances given by the requesting state:

> "(Where an assurance is) given, or at least endorsed, by the issuing judicial authority ….the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities ……. must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular centre (infringe Article 3 ECHR)."
> [emphasis added]

Significantly, the court then addressed the duty of the executing judicial authority in any case where either (a) there are indications of conditions infringing Article 3 or (b) an assurance has not been provided or endorsed by the issuing judicial authority. In either such case, it is incumbent upon the executing judicial authority to undertake "*an overall assessment of all the information available to it*": see para [114].

[9] In the third of the decisions in question, *Doborantu* [Case C-128/18], the Grand Chamber addressed inter alia the interface between the principles of mutual trust and recognition and the efficacy of judicial co-operation (on the one hand) and a finding by the executing judicial authority that the "real risk" test is satisfied. See para [85](iv):

> "A finding, by the executing judicial authority, that there are substantial grounds for believing that, following the surrender of the person concerned to the issuing Member State, that person will run such a risk, because of the conditions of detention prevailing in the prison in which it is actually intended that he will be detained, cannot be weighed, for the purposes of deciding on that surrender, against considerations relating to the efficacy of judicial co-operation in criminal matters and the principles of mutual trust and recognition."

In other words, in any case where the governing test is satisfied, there is no balancing exercise to be carried out. Rather, the absolute prohibition against proscribed treatment enshrined in Article 3 ECHR/Article 4 of the Charter must prevail without qualification. Finally, at para [79] the Grand Chamber identified one specific option at the disposal of the executing judicial authority namely ordering the surrender of the requested person *subject to Article 4 of the Charter*.

Extradition Post – Brexit

[10] As this court observed at para [68] of its recent decision in *Latvia v Ancevskis* [2021] NIQB 116 (promulgated on 10 December 2021), by virtue of the date of execution of the EAW in that case, 18 November 2020, both the Framework Decision and the 2003 Act applied fully to the determination of the appeal. Having referred to the Article 62 of the Withdrawal Agreement, the court added that extradition motivated arrests postdating 31 December 2020 are governed by a different legal regime. This new regime applies in the present case, given that the EAW was executed on 19 July 2021.

[11] The transitional period which followed the Brexit referendum ended on 31 December 2020. On 24 December 2020 the UK-EU Trade and Co-operation Agreement ("TCA"), one of the major Brexit instruments, was agreed. The subject matter of Part III is law enforcement and judicial co-operation. While the TCA is, of course, an international treaty, these provisions form part of domestic law by virtue of their incorporation in the Extradition Act 2003 by the European Union (Future Relationship) Act 2020 ("EUFRA"). While the new extradition regime largely mirrors its EAW predecessor established by the Framework Decision, there are nonetheless some notable differences. To draw attention briefly to some of these will hopefully be instructive in future cases.

[12] In brief compass, the EAW has been replaced by the Arrest Warrant ("AW"); EAWs issued prior to 31 December 2020 will be treated as AWs; the 2003 Act, unamended, applies to all cases in which pursuant to an EAW a person was arrested or extradited prior to 31 December 2020 (and see *Polakowski v Westminster Magistrates' Court* [2021] EWHC Civ 53 (Admin)); provision is made for diplomatic assurances (Article 84); no distinction is made between accusation and conviction warrants as regards the principle of proportionality (see the amended section 21A of the 2003 Act); the EU27 and Gibraltar remain Part 1 territories; and a specialised EU/UK joint oversight committee has been established.

[13] Specific provision is made for the post-Brexit operation of the jurisprudence of the CJEU. This will no longer apply to the UK in respect of AWs under the TCA. Furthermore, neither the UK's interpretation of the TCA nor that of the CJEU will be binding on the other: Article 13(3). Thus, the CJEU, representing as it previously did namely the supreme source of authoritative interpretation on the meaning and application of supreme EU law, no longer has any binding decision-making effect in extradition cases in the UK. We shall comment further on this in para [63] infra.

[14] Amongst other notable differences between the old and new regimes are: the principle of mutual trust and confidence, a core principle, has evaporated; at a more prosaic level, the UK is no longer a member of Europol or Eurojust; the former mechanism for custody transfer between Member States has not been replaced; ditto the mechanism for the enforcement of pre-trial bail conditions in another territory; and, the Framework Decision no longer applying the UK, ten EU Member States will no longer extradite their nationals to be prosecuted in the UK.

[15] Of relevance in the present case is, firstly, [Article 604 (3)/Article LAW.SURR 84], which concerns guarantees to be given by the "*issuing state*" (formerly the "requesting state") in particular cases. It provides in part:

> "The execution of the arrest warrant by the executing judicial authority may be subject to the following guarantees:
> ...
> (c) if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant."

Article [613/LAW.SURR.93], the subject matter whereof is "*Surrender Decision*" is also germane. It provides:

> "1. The executing judicial authority shall decide whether the person is to be surrendered within the time limits and in accordance with the conditions defined in this Title, in particular the principle of proportionality as set out in Article 597.
>
> 2. If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Article 597, Articles 600 to 602, Article 604 and Article 606, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits provided for in [Article 615/ART.LAW.SURR 95].
>
> 3. The issuing judicial authority may forward any additional useful information to the executing judicial authority at any time."

Pausing, it is at once apparent that this latter provision is framed in terms substantially similar to its Framework Decision equivalent, namely Article 15(2) of the latter. Indeed, these provisions are couched in almost identical terms. It follows that where questions arise under Article 613 of the new regime, the jurisprudence of the CJEU outlined in paras [4]–[9] supra, will arise in appropriate cases. We refer to our observations in para [13] and will comment further on this issue infra.

The Underlying Proceedings

[16] In the decision of the County Court Judge at first instance it is recorded, at para [3]:

> "In the course of the proceedings a Request for Further Information was sent to the Issuing Judicial Authority (IJA) with the approval of the Court to which a response was received dated 17th November 2021. The RP filed an affidavit in January 2022 and this was supported by a skeleton argument filed on his behalf by his then counsel Mr Conn O'Neill on 26th January 2022. Ms Marie-Claire McDermott responded on behalf of the RS on 31st January

> 2022. Thereafter the RP changed his legal representation with Mr Sean Devine being instructed, who then filed a supplementary skeleton argument on the 8th May 2022 to which Ms McDermott responded on the 10th May. The case came on for final hearing before me on Friday 13th May."

A response dated 17 November 2021 was received. At para [12], the judge recorded the submission of Mr Devine, of counsel, that in this way the "*Aranyosi process*" had been initiated with the result that the onus was on the requesting state to provide appropriate assurances. At para [13] the judge noted the submission on behalf of the requesting state that this letter did not constitute an *Aranyosi* request for assurances. Next, the judge observed that he had not been personally involved in the composition or transmission of the letter. Continuing, quoting from one passage of the letter of response, the judge states at para [17]:

> "Distilling this down to simple terms the IJA has therefore given the clearest possible undertaking that regardless of where the RP would be detained his Article 3 rights would be guaranteed."

The judgment does not resolve the competing contentions of the parties.

[17] At para [24] the judge records the specific submission of Mr Devine that the response of the requesting state had failed to address the question of where the Appellant would be accommodated if surrendered, with the result that the concerns underpinning the letter of request had not been assuaged. The judge did not resolve this submission. Rather, he repeated what he had said in para [17], adding that his confidence that there would be no Article 3 ECHR infringements had been fortified by the decision of the English High Court in *Danfelds v General Prosecutors Office of Latvia* [2020] EWHC 3199 (Admin) 2020. We shall, for convenience, describe the letter transmitted to the issuing judicial authority and its response as the "Article 15(2) correspondence."

The Article 15(2) Correspondence Further Considered

[18] This court was troubled by three particular aspects of the Article 15(2) correspondence. First, in the hearing bundle the letter addressed to the issuing judicial authority of Latvia was plainly not the letter actually transmitted but was, rather, a mere lawyer's initial draft. Second, there was no information, either in the first instance judgment or provided by the parties' legal representatives, pertaining to the procedure and events at first instance giving rise to the transmission of the letter actually sent. Third, the dispute between the parties about the legal character and status of the letter and the response had not been resolved in the decision of the County Court. It is appropriate to add here that the appellant's current legal

representatives were not on record for him at the time of the Article 15(2) correspondence.

[19] Reflecting these concerns the court gave certain procedural directions. The response which these elicited from the lawyers representing the requesting state yielded the provision of the letter actually transmitted. The letter is dated 29 October 2021 and emanated from the NI Courts and Tribunal Service ("NICTS"). This exercise exposed the disturbing fact that the draft letter contained in the hearing bundle and the letter actually transmitted are couched in differing terms. In short, the NICTS letter to the relevant Latvian agency (but not the version in the hearing bundle) included the following paragraph:

> "Accordingly, and in compliance with the procedure set out in Aranysoi and Caldararu, this court must now make a specific and precise assessment as to whether there are substantial grounds to believe that the Requested Person will be exposed to a real risk of inhuman or degrading treatment as a result of the conditions of detention within the Requesting State of Latvia."

(We shall describe this as the "*Aranysoi paragraph*".)

[20] In contrast, the letter in the hearing bundles at first instance and before this court (the lawyer's draft noted above) omitted this paragraph. Bearing in mind the Preamble to this judgment, we shall make certain further observations and provide appropriate guidance infra.

[21] Analysing the Article 15(2) letter further, the basis for what follows the *Aranysoi* paragraph, namely 12 specific requests for information and/or assurances, was, firstly, the simple fact that the Appellant was contesting his extradition on the basis of asserted concerns about prison conditions in Latvia "*… asserting that his ECHR Article 3 rights will be impinged*". As appears from what follows in the paragraph reproduced above, the request for further information/assurances was also based on the decision of the Recorder of Belfast in *Konusenko v Latvia* promulgated on 18 January 2019. Elaborating, the letter states that in *Konusenko* the issue in play was that of judicial concerns about possible inhuman and/or degrading prison conditions in Latvia, the court transmitted four questions to the requesting state seeking four corresponding assurances and the court concluded that the response of the requesting state was inadequate, warranting the assessment that the Article 3 ECHR test was satisfied with the result that the requested person was discharged. The letter also drew attention to the CPT report published in June 2017 and the decision in *Danfelds* (noted above).

[22] Summarising, the NICTS letter sought a combination of specified information and assurances. These related mainly to specific aspects of the prison conditions in which the Appellant would be accommodated in the event of his

surrender to Latvia. In addition, information about the numbers of prisoners detained and prison staffing levels was requested. Furthermore, confirmation that the Appellant would not be detained in the Griva section of Daugavriva Prison ("Griva") was sought. The eighth of the 12 numbered requests was in these terms:

> "Please provide an assurance that the conditions at the relevant section of each prison in terms of prison numbers, staffing levels and inter-prisoner violence would not breach the rights of Mr Kilgasts pursuant to Article 3 of the ECHR."

[23] The letter of response of the requesting state is dated 05 November 2021. The following are its most noteworthy features:

(a) As a convicted person the Appellant, in the event of his surrender, would be detained at one of nine identified prisons: which prison would be a matter for future determination.

(b) The Appellant's initial detention would be in a specified "quarantine unit" (the features whereof were detailed).

(c) The Griva unit had undergone specified repairs and improvements in 2018 and 2019 and renovations were continuing.

(d) Details of prisoner numbers throughout the prison state were provided.

(e) This was followed by details of – in summary – minimum cell space, illumination (natural and artificial), ventilation (natural and artificial), heating, sanitary and running water facilities, cleaning and hygiene products provided, exercise facilities, provision for access to lawyers and health care services. The letter then refers in general terms to provisions of both the Latvian constitution and an identified Latvian law said to proscribe treatment contravening Article 3 ECHR.

The letter is silent on the issue of inter-prisoner violence and the related issue of staffing levels. Furthermore, it does not provide the requested assurance that the Appellant, if surrendered, would not be detained in Griva.

[24] As noted at para [10] above, the first instance judge was particularly impressed by one specific passage in the letter. See para [16]:

> "Near the end of the response the IJA specifically addresses the question of the relationship between the guarantees and Article 3 ECHR by reference to paragraph 1 of Section 10 of the State Administration Structure Law. This lays down that:

> 'State administration shall be governed by law and rights. It shall act within the scope of the competence laid down in law and regulations. It follows from this legal principle that the State Administration, including the Administration and its structural units, is obliged to perform its functions (including those in relation to the imprisoned persons) in accordance with the procedures and to the extent specified in regulatory enactments developed also in compliance with the minimum standards contained in Article 3 of the European Convention of Human Rights, including that regulatory enactments regulating the accommodation of imprisoned persons in places of imprisonment, the requirements specified in regulatory enactments for the equipment of cells, as well as material provision of the imprisoned persons' nutritional and household needs, thus the actual circumstances may not differ from the above mentioned requirements.'"

We shall return to this passage at a later stage of this judgment.

The CPT Report and Related Evidence

[25] It is trite that in every case where a requested person's surrender pursuant to an EAW is based on Article 3 ECHR the judicial assessment will turn on the quality and adequacy of the evidential foundation of this objection. In the present case it appeared to this court that the evidential foundation had five components, namely the CPT report, the decision in *Konusenko*, the Latvian evidence which can be distilled from the decision in *Danfelds* (infra), the Art 15(2) correspondence and the Appellant's affidavit. Mr Devine helpfully acknowledged the correctness of this assessment. We turn to consider each of these evidential pillars, in tandem with other relevant materials. In doing so we remind ourselves of the core of this appeal. This is helpfully formulated in Mr Devine's skeleton argument in these terms:

> "The thrust of this appeal is simple: the [County] court sought specific and precise assurances that Mr Kilgasts would not be kept at a particular institution [RIVA] – that assurance was not forthcoming and the [County Court] was compelled therefore either to seek further clarification or discharge Mr Kilgasts."

[26] As noted above, in June 2017 the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "*CPT*") published a report relating to prison conditions in Latvia. Pausing, this report was not included in the hearing bundle before this court. Nor did it form part of the hearing bundle at first instance. From this it follows that the judge's assessment of this report was based on secondary sources only (in particular the *Danfelds* decision). This court received the report, upon direction, following the first day of the hearing of this appeal.

[27] It is clear from the text that the CPT had, by a series of separate visits and related processes, been monitoring closely prison conditions in Latvia during a period of several years. Many of the issues highlighted in the report are remote from the case which the Appellant makes to this court. Notwithstanding, it is appropriate to consider the report as a whole as its contents in their totality are capable of bearing on the legal test to be applied (see infra).

[28] Having regard to the central thrust of the Appellant's case, it suffices to highlight specific features of the CPT report. First, inter-prisoner violence and inadequate staffing levels were noted. Second, it found most of the prisoner accommodation in Griva to be in an advanced state of dilapidation and in many places the sanitary facilities were in an appalling state of hygiene. The CPT urged immediate remedial measures and the provision of an action plan in respect of Griva. Subsequently, specific information about actual and planned further improvements was provided by the Latvian Government.

[29] More specifically, the Report noted the following:

> "The delegation received no allegations of recent physical ill-treatment of inmates by staff in any of the prison establishments visited. However, the delegation's findings at Daugavgrīva, Jelgava and Rīga Central Prisons indicated that inter-prisoner violence remained a problem. As in the past, this state of affairs appeared to be the result of a combination of factors, including an insufficient staff presence in prisoner accommodation areas, the existence of informal prisoner hierarchies and the lack of purposeful activities for most inmates. The CPT recommends that the Latvian authorities vigorously pursue their efforts to combat the phenomenon of inter-prisoner violence. It also calls upon the authorities to review staffing levels at Daugavgrīva, Jelgava and Rīga Central Prisons, with a view to increasing the number of custodial staff present in the detention areas."

The above passage is obviously germane to the Appellant's case, as is the following:

"The CPT also formulates a number of specific recommendations regarding various other prison- related issues, such as prison staff, prisoners' contact with the outside world and discipline. In particular, the CPT calls upon the Latvian authorities to increase the number of custodial staff present in the detention areas at Daugavgrīva, Jelgava and Rīga Central Prisons."

[30] The issue of prisoner ill treatment is specifically addressed in the following section:

"***Ill-treatment***

3. The CPT is pleased to note that its delegation received no allegations of recent physical ill-treatment by staff of inmates in any of the prison establishments visited.

- That said, at Daugavgrīva, Jelgava and Rīga Central Prisons, information gathered through interviews with staff and inmates and an examination of registers of body injuries indicated that inter-prisoner violence remained a problem. As in the past, this state of affairs appeared to be the result of a combination of factors, including insufficient staff presence in prisoner accommodation areas, the existence of informal prisoner hierarchies and the lack of purposeful activities for most inmates.

- The delegation gained the impression that efforts were being made by the management of the prisons concerned to prevent incidents of inter-prisoner violence, in particular by segregating prisoners who were vulnerable and/or sought protection and prisoners known for aggressive behaviour towards fellow-inmates. From discussions with staff and consultation of the relevant documentation, it also transpired that all alleged or detected incidents of inter- prisoner violence, as well as any injuries indicative of such violence, were recorded by staff (including health-care staff) and reported to the internal investigation unit of the Latvian Prison Administration.

However, as acknowledged by staff, even the inquiries regarding cases clearly indicative of the infliction of bodily injuries were usually inconclusive, as the victims chose not to denounce the perpetrators (as did any witnesses among the prisoners) and claimed to have sustained the injuries accidentally.

- Further, the CPT is seriously concerned by the very low staffing levels in the above- mentioned prisons (see also paragraph 90). By way of example, in one of the living units at the Grīva Section of Daugavgrīva Prison, one prison officer was responsible for supervising some 130 inmates from 5 p.m. till the following morning. At Jelgava Prison, there was no permanent staff presence within the units for prisoners on the medium and high regime levels after 5 p.m..[19] It goes without saying that, with such low staffing levels, it is scarcely possible to tackle effectively the problem of inter-prisoner violence.

Staff were said to be carrying out observation rounds every 30 minutes."

The CPT must reiterate that an effective strategy to tackle inter-prisoner violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of inmates and support each other effectively in the performance of their tasks. Addressing the phenomenon of inter-prisoner violence also requires that prison staff be particularly attentive to signs of trouble and properly trained to intervene in a determined and effective manner, at the earliest possible stage. In this context, the existence of positive relations between staff and prisoners, based on notions of dynamic security and care, is a decisive factor; such relations can help to overcome the habitual reluctance of victims (or witnesses) to denounce the perpetrators of inter-prisoner violence.

The CPT recommends that the Latvian authorities vigorously pursue their efforts to combat the

> phenomenon of inter-prisoner violence at Daugavgrīva, Jelgava and Rīga Central Prisons (and, as appropriate, in other prison establishments in Latvia), in the light of the above remarks). Further, particular attention should be paid to the problem of inter- prisoner violence in the context of initial and in-service training programmes for prison officers."

[31] Chronologically, the next material source of information is that generated by the Article 15(2) request in *Konusenko* and the Latvian response thereto. Judgment therein was promulgated on 18 January 2019. In that case, Belfast County Court invoked the *Aranyosi* procedure and sought of the Latvian authorities an assurance that in the event of surrender the requested person would be detained in Article 3 ECHR compliant conditions and a further assurance that he would not be detained in Griva. The two salient features of the factual matrix were (a) the CPT report documenting details of the dilapidation and other defects in Griva and (b) the Latvian response indicating vaguely that unspecified repair works were "ongoing". The second of the two assurances was not provided. The court's conclusion was that its initial concerns had not been assuaged by the Latvian response and extradition was refused.

[32] The next material development chronologically was a meeting of the UNCAT ("UN Committee Against Torture ") on 21 November 2019 at which the CPT report was considered. One month later the CPT published its "*Concluding Observations*". While welcoming the replies which had been provided by the Latvian authorities, the CPT had the enduring concern that:

> "…. the 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 [Griva], which has the status of historic monument."

The CPT recommended that the Latvian authorities should continue its programme of renovations of all detention facilities.

The Decision in Danfelds

[33] The next source of material information is found in the response of the requesting state to the Article 15(2) request of the Divisional Court in *Danfelds*, promulgated on 24 November 2020. The first instance judge attributed considerable weight to it: see paras [19] – [25] of his decision. We would observe that by the doctrine of precedent it is not binding on this court: see *Re Steponaviciene's Application* [2018] NIQB 90 at para [24].

[34] In *Danfelds* there were two conjoined appeals against decisions of the District Judge ordering the extradition of the appellants to Latvia. The evidence considered by both courts included the CPT report. At the stage of granting permission to appeal the Court of Appeal transmitted an Article 15(2) letter to the issuing judicial authority seeking certain information and guarantees, reproduced at para [17] of the judgment. In passing, it would appear that the letter transmitted in the present case was probably modelled on the *Danfelds* letter. The latter focused on inter alia prison numbers, staffing levels and inter-prisoner violence. It sought an assurance that neither appellant would be detained in Griva. The CPT report and subsequent related documents constituted the main evidence considered by the court.

[35] It is readily apparent that the Latvian response letter in that case contains passages either identical, or closely comparable, to those found in the response in the present case. According to para [31] of the judgment (in contrast with the present case) information about "the systems in place to address inter-prisoner violence ……" was provided. Finally, it was asserted that repairs to certain cells and to the showering facilities in certain wings of Griva had been completed in 2017 – 2019, with certain continuing works of improvement.

[36] Next, the court considered the response of the requesting state to the Article 15(2) letter. This response is closely comparable to that provided in the present case. Notably, however, the judgment records in para [31] that details were provided about inter alia "… the systems in place to address 'inter-prisoner violence' … "The response also provided details of repairs to certain cells, shower facilities and the roof in specified parts of Griva. At para [44] the court formulated its main task in these terms:

> "*If the conditions in Griva section amount to inhuman and degrading treatment then it axiomatically follows that the Appellants would, if extradited, be at real risk of suffering such treatment. In those circumstances it seems to us highly relevant to assess whether the conditions in Griva section amount to inhuman and degrading treatment.*"

[37] Noting the failure of the requesting state to identify any specific prison in which the appellants would be detained (a feature of the present case also), the approach which the court formulated – at paras [44] and [48] – was that there was a "*real prospect*" that the Appellants would be detained in Griva. As para [50] of its judgment confirms, the court based its conclusion on the CPT materials, the Article 15(2) request and response and the decision in *Komusenko*. In making its conclusion the court highlighted in particular that it had considered evidence postdating the decision in *Komusenko*. The court was impressed by the engagement of the Latvian authorities with the CPT, observing at para [60]:

> "*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*."

The court then addressed the issue of the physical conditions prevailing in Griva, at para [61]:

> "There may well be continuing difficulties in the Griva 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 Griva section."

[38] In the following section of its judgment the court addressed the topic of inter-prisoner violence. While there was no dispute that the first Appellant had been assaulted by another prisoner some five years previously, the court concurred with the district judge, for the reasons given, that this did not demonstrate a real risk of treatment in breach of Article 3 ECHR. The next passage in this judgment, para [64], falls to be reproduced in full:

> "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."

At para [65] the court enunciated its conclusion on the issue of inter-prisoner violence:

> "The evidence falls far short of what would be required to rebut the presumption that Latvia complies with its obligations under Article 3 ECHR …"

This conclusion was unshaken by the new evidence which the court admitted, outlined at para [68].

[39] The omnibus conclusion of the court, at para [69], was that the Appellants were not at real risk of suffering inhuman or degrading treatment in the event of being extradited to Latvia.

[40] At this juncture we take cognizance of the most recent decision of the English Divisional Court, *Elmeris v The General Prosecutor's Office, Republic of Latvia* [2022] EWHC 2002 (Admin), promulgated on 29 July 2022. There the appellant, relying on Articles 2, 3 and 8 ECHR, opposed his extradition to Latvia on the ground of apprehended detention conditions. He failed at both levels. Notably, the evidential matrix included clear indications of the continuing problem of prison staff shortages. Magowan J observed at para [14]:

> "All prisons are understaffed and therefore problems with violence continue, particularly arising out of the hierarchies established by the prisoners themselves."

Para [15] of the judgment highlights the intensely fact specific nature of the case. It had no *Aranyosi* dimension.

[41] Pausing briefly, we would observe that this appeal typifies one particular, and well established, feature of extradition litigation namely the consideration by a later court of evidence contained in earlier judgments of other courts. In some cases such evidence consists *Aranysoi*-type requests for further information and the response of the requesting state. It is frequently incomplete. Evidence of this kind is generally incomplete. In particular, it is not the practice to reproduce in judgments either in this jurisdiction or that of England and Wales Article 15(2) requests and responses. We would observe that it lies within the capacity – and choice – of the requesting state to provide to the court and the requested person copies of such materials in a later case.

The Appellant's Affidavit

[42] The final material source of evidence to be considered by this court is the Appellant's affidavit, sworn in January 2022 for the purpose of the first instance hearing. This contains the following material averments:

> "I have been in trouble in Latvia before. I have been imprisoned in Latvia before too. This was quite some time

> ago and it was for one year. It was a terrible experience. It was over crowded, there were gang fights and very little food. You rarely got the opportunity to wash. You were sometimes locked up in the small dorms for days with lots of other prisoners. It was a dangerous place to be …
>
> When I learnt what prison sentence awaited me, I decided to leave Latvia. I was too scared to face the return to prison in Latvia given my previous experience."

We shall analyse these averments infra.

The Art 3 ECHR Test

[43] The test to be applied in so-called "foreign" Article 3 ECHR cases is multi-faceted. At the outset, it is appropriate to note that Article 3 ECHR and Article 4 of the (Lisbon) Charter of Fundamental Rights of the EU are materially indistinguishable, as the decision in *Aranyosi* indicates. In expulsion, extradition and deportation cases the test which has evolved is whether there is sufficient evidence of a cogent nature to establish substantial grounds for believing that the individual would be at real risk of suffering treatment proscribed by Article 3 in the relevant foreign state. This is the well-known "Soering" formula (*Soering v United Kingdom* [1989] 11 EHRR 439). This was considered by this court in *Michailovas*, at para [66]:

[44] Next it is necessary to consider the characteristics of treatment proscribed by Article 3. As is clear from the foregoing the treatment proscribed by Article 3 ECHR on which the Appellant's case is based is inhuman or degrading treatment and not torture. According to the jurisprudence of the European Court of Human Rights ("ECtHR") treatment is degrading where it humiliates or debases an individual, showing a lack of respect for, or diminishing the person's human dignity or arouses feelings of fear, anguish or inferiority capable of breaking the person's moral and physical resistance. This summary derives from one of the ECtHR's earliest pronouncements on this subject, in the landmark case of *Ireland v UK* [1978] 2 EHRR 25 at para [162]. The court added that in order to fall within Article 3 the treatment must attain a minimal level of severity and in determining this –

> "It depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some cases, the sex, age and state of health of the victim."

In *Salmooni v France* [1999] 29 EHRR 403 the court emphasised, at para [101], that the embrace of Article 3 is an evolving one. This flowed from the dynamic character of the Convention and the Court's view that –

> "The increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies."

This exemplifies one of the recurring features of the Court's jurisprudence.

[45] This juridical approach is unsurprising having regard to the absolute guarantee which Article 3 enshrines and the "living instrument" philosophy of the ECHR. It is one of the few Convention rights expressed in unqualified terms and it admits of no margin of appreciation. However, a distinction, of some importance, between the conduct of State actors and that of non-State actors must be recognised. Stated succinctly, in the second of these two categories a test of reasonable protective measures by the State has been developed. This flows from the recognition that direct responsibility for the acts of private individuals (including the private conduct of State actors) cannot be attributed to a Contracting State. See for example *Beganovic v Croatia* [2009] ECHR 46423/06 at para [68] and *Cevik v Turkey (No 2)* [2010] ECHR 42296/07 at para [33]. The modified standard to be applied in such cases derives from Article 1 of the Convention which obliges all Contracting Parties to secure to everyone within their jurisdiction the rights and freedoms enshrined.

[46] The Article 3 non-State actors cases which the ECtHR has considered including instances of serious violence perpetrated against vulnerable prisoners by other prisoners. See for example *Pantea v Romania* [2003] 40 EHRR 627, *Rodic and Others v Bosnia and Hertzogovena* [2008] ECHR 22893/05 and *DF v Latvia* [2013] ECHR 11160/07. As the latter decision demonstrates proof of actual violence and injury is not an essential pre-requisite to establishing a breach of Article 3 ECHR in this class of case. The main ingredients in *DF* were a heightened risk of serious violence perpetrated by fellow prisoners, a failure by the prison authorities to transfer the applicant to a safer location and ensuing mental anguish and anxiety.

[47] The standard of *reasonable* steps is expressed with particular clarity in the decision of the Grand Chamber in *O'Keefe v Ireland* [2014] Application no. 35810/09) [para 1144] and more recently, *X and Others v Bulgaria* [2021] Application no. 22457/16) at para [183]. In O'Keefe the positive obligation of the State under Article 3 ECHR is expressed in the following terms:

> "The obligation on High Contracting Parties under Article 1 of the Convention ….. taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals.

> This positive obligation to protect is to be interpreted in such a way as not to impose an excessive burden on the authorities bearing in mind in particular the unpredictability of human conduct and operational choices which must be made in terms of priorities and resources. Accordingly, not every risk of ill-treatment could entail for the authorities a Convention requirement to take measures to prevent that risk from materialising. However, the required measures should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge ….."
> [Emphasis added.]

As this summary demonstrates, there is a close association between this test and the well-known kindred *Osman* Article 2 test.

[48] In domestic jurisprudence the leading UK decisions have followed the same path. See in particular *Bagdanavicius v Secretary of State for the Home Department* [2005] 2 AC 668 and *In Re E (A child)* [2008] UKHL 66 at para [48] especially, per Lord Carswell. More recently, in *Lord Advocate v Dean* [2017] UKSC 44 the UK Supreme Court has considered the application of this test in an extradition case involving an Article 3 HER objection based on an asserted risk of mistreatment by fellow prisoners. In short, applying *Bagdanavicius*, mistreatment by non-State actors, however violent, does not involve a breach of Article 3 by the State unless the relevant agency or agencies has failed to provide reasonable protection against it.

Our Conclusions

[49] Our first conclusion relates to the status and characterisation of the correspondence exchanged between Belfast County Court and the relevant agency of the requesting state. Having conducted the exercise in paras [15] – [23] above, the conclusion that this was not of the *Aranyosi* variety is inevitable. In short, there were two versions of the proposed letter. The Appellant's former legal representatives prepared the first version which included the *Aranyosi* paragraph. The response of those representing the requesting state was to delete this. Judicial adjudication of this disputed matter was required. However, none occurred. Furthermore, two administrative lapses, fully acknowledged, materialised. First, the matter of transmitting the letter to Latvia was overlooked for some time. Second, the "*Aranysoi* version" was sent in error.

[50] To the foregoing we would add the following. The transmission of an *Aranyosi* type letter – now pursuant to Article 613 of TCA – can never be a matter of course or routine. This flows from the prescriptive terms of the jurisprudence of the CJEU. By virtue of these in every case where the question of transmitting an

Aranyosi type letter arises -whether at the instigation of a party or on the court's own initiative – a judicial assessment and determination are required. The court must determine whether there exists objective, reliable, specific and properly updated evidence demonstrating a real risk of exposure of the requested person to inhuman or degrading treatment in the event of surrender to the requesting state. If the court of the requested states determines that there is such a risk, it must invoke the Article 613 TCA procedure: and the converse applies fully.

[51] This court considers that the process required of the first instance court should be of the typical, conventional kind. It will entail considering the available evidence, the parties' arguments and any proposed letter in draft. While this will not necessarily entail an oral hearing in every case, attention to the principle of open justice will be required. The court will then make its decision. A focused and reasoned text, accompanied by the appropriate order, should follow. This will convey to the parties (and, in the event of later appeal, to this court) whether there are any indications of error of law and will also enable further informed representations to the first instance court to be made where considered appropriate. If the decision of the court is to transmit an Article 613 TCA request to the relevant agency of the requesting state it would be preferable to incorporate the terms thereof in the body of the decision or as an appendix thereto or as an appendix to the court's order.

[52] In the present case, none of the foregoing occurred. This gave rise to certain unsatisfactory consequences, including in particular the diversion of substantial judicial resource and delay in determining this appeal. This will be avoided in future cases by adherence to the guidance we have formulated.

[53] The further, related issue which must be addressed concerns the terms in which *Aranyosi* type requests for further information are formulated. This court has identified a noticeable trend whereby such requests typically seek inter alia confirmation of whether the requesting state will, in the event of the surrender of the requested person, treat him in compliance with Article 3 ECHR. This is evident in *Konusenko*, *Danfelds* and the present case. We refer also to the passage in the letter transmitted in the present case reproduced in para [22] above.

[54] We would question the wisdom and utility of requests formulated in such terms. They do not appear to be compatible with the *Aranyosi* decision. There the CJEU stated that such requests should seek the provision of "*all necessary supplementary information on the condition on which it is envisaged that the individual concerned will be detained in that Member State*": see paras [95] – [97]. This is required in order to make the necessary "*specific and precise*" assessment of whether there are substantial grounds for believing that the requested person will be exposed to the relevant risk on account of his envisaged detention conditions in the requesting state: see paras [92] – [93]. Furthermore, the juridical starting point entailing a presumption of compliance with Article 3 ECHR – at least in Framework Decision cases - militates still further against the transmission of a general request seeking a

general assurance that the requesting state will comply with its relevant legal obligations.

[55] As we have observed in para [24] above, the first instance judge in the present case was particularly impressed by the requesting state's response to certain requests formulated in the kind of vague and general terms which this court would strongly discourage. We do not agree with that part of his judgment. We would make clear, however, that it will normally be appropriate in this type of case to ask the requesting state to identify the relevant domestic laws – contained in its constitution, applicable codes, legislation et al – bearing on the requested person's objection to extradition. Furthermore, where there are issues regarding non – State actors a request in these specific terms will almost invariably be appropriate as the response will have a bearing on the application by the court of the requested state of the Article 3 ECHR test of reasonable protective measures. The reason for this is based on the positive obligation of Contracting States under Article 3 ECHR to establish a legislative and regulatory framework of protection designed to safeguard persons against breaches of their physical and psychological integrity. See for example *X and Others v Bulgaria* [2021, Application no. 22457/16) at para [179].

[56] Next we turn to the Appellant's affidavit, considered at para [42] above. Taking his averments at their reasonable zenith, they invite the following analysis. First, they are bereft of specificity and particularity. Second, they do not describe any relevant prevailing conditions or circumstances. Third, while they do describe prison conditions which are unsatisfactory and unpleasant, they fall short of establishing inhuman or degrading treatment. Finally, the inter-prisoner violence which they describe is related specifically to gangs and fights between members of such gangs. There is no suggestion that conduct of this kind had the effect of exposing other members of the prison population to inhuman or degrading treatment.

[57] We turn to consider the other sources of evidence identified above. These include the account in *Danfelds* of the Article 15(2) correspondence in the context of those proceedings. As already noted, in that case the requesting state did respond to the divisional court's request for information about inter-prisoner violence and measures to address this: see para [26] above. The court's account of this response augments the evidence available to this court and we take it into account accordingly. This is the most recent evidence in the overall matrix. It indicates that the requesting state engaged adequately with the specific request. Substantively, it discloses that, in the language of the English Divisional Court, "*... the Latvian authorities are seeking to address the problem*" of inter-prisoner violence: in substance, they were making reasonable efforts. This is an assessment which this court is disposed to adopt.

[58] The real question is whether this court has any grounds for departing from the overall assessment of the Divisional Court – at para [65] – that the evidence

bearing on the topic of inter-prisoner violence "*falls far short*" of rebutting the presumption that the requesting state complies with its obligations under Article 3 ECHR. Given the absolute nature of the prohibition enshrined in Article 3 and having regard to the potentially grave consequences for any victim of a breach we have formed our own independent view, mindful that as a matter of precedent the decision in *Danfelds* is not binding on this court. We have conceived it our duty to subject all of the available evidence to rigorous scrutiny.

[59] In doing so we have taken into account the inadequacies of the requesting state's response to the Article 15(2) letter of the County Court, noted in para [23] above, specifically its failure to address the inter-related issues of prison staffing levels and inter-prisoner violence. While this failure is unsatisfactory we consider that it is adequately redeemed by the evidence which the requesting state did provide in the *Danfelds'* case, as recorded in that judgment, considered in conjunction with all the other evidence. We have taken into account also that in its response the requesting state did not provide the requested assurance that in the event of his extradition the Appellant would not be detained in *Griva*. Mr Devine was correct to emphasise this. However, having regard to our assessment of all the evidence, we can identify no basis for concluding that the possible detention of the Appellant in this unit, either in isolation from or considered in conjunction with his other complaints, satisfies the *Soering* test. We make this conclusion recognising the possibility that in the event of his surrender the Appellant will be detained in Griva. In short, the evidence considered as a whole fails to attain the requisite threshold.

[60] We remind ourselves of the central thrust of this appeal. Per Mr Devine's skeleton argument:

> "The thrust of this appeal is simple: the [county] court sought specific and precise assurances that Mr Kilgasts would not be kept at a particular institution [Griva] – that assurance was not forthcoming and the [county court] was compelled therefore either to seek further clarification or discharge Mr Kilgasts."

This might be said to be the narrow footing on which the Appellant's case is promoted. As appears from the preceding paragraphs of this judgment, we have considered his case on the broader footing which extends beyond the mere "Griva factor" to encompass specific aspects of conditions there and in particular the other discrete ingredients of his case, namely the asserted risk of violence perpetrated by other prisoners and the related matter of inadequate prison staffing capacity. For the reasons given, in common with the English Divisional Court in *Danfelds* we consider that the evidence falls measurably short of the threshold to be overcome in order to satisfy the test.

Extradition Post – Brexit: Some Further Observations

[61] As explained in paragraph [10]ff above, the legal regime governing the determination of this appeal no longer consists of the Framework Decision and the earlier version of the 2003 Act. Rather its twin components are the TCA and the 2003 Act as amended. It follows that in determining this appeal we have not had recourse to the principles entailing a high level of mutual trust and confidence between requesting state and requested state, mutual recognition and the presumption that Latvia complies with its obligations under Article 3 ECHR and Article 4 of the Charter. Having said that, there is of course scope for the absorption of these principles, unmodified or otherwise, as the post-Brexit jurisprudence evolves.

[62] There is nothing in the TCA indicating that the CJEU Framework Decision jurisprudence is to be discarded and ignored. Nor is this mandated by the EU (Withdrawal) Acts. This is a matter of real importance in cases such as the present, where the requested person's resistance to extradition rests heavily on landmark decisions of the CJEU Grand Chamber under the Framework Decision. We have in this judgment given consideration to several decisions of the CJEU. In doing so we have identified no bar in the TCA, the domestic Brexit statutory arrangements or any other reason for declining to give full effect to these. In particular, we consider our approach harmonious with section 6(1)(a) of the EU(Withdrawal) Act 2018, the tailor-made extradition regime enshrined in the TCA and the EUFRA. Our approach has been one of choice rather than compulsion. Previously the principle of the supremacy of EU law would have imported compulsion.

[63] This court recognises that fuller argument on these issues could materialise in future appeals.

Omnibus Conclusion

[64] For the reasons given we dismiss the appeal and affirm the decision and order of Belfast County Court.