

IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN :

The Prosecutor`s Office, the Republic of Latvia

Requesting Judicial Authority

V

Alla Gerasimenko

Requested Person

RULING

Issue raised :

s.21 (Article 8:Right to a family Life)

- 1.** Latvia seeks the extradition of Alla Gerasimenko (**the Requested Person / AG**) to face criminal prosecution in respect of the allegations set out in the European Arrest Warrant (‘EAW’) upon which this extradition is based.
- 2.** The Requested Person was born on **2nd November 1985** and does not consent to extradition.
- 3.** The EAW was issued on **21st January 2015** and certified by the National Crime Agency (N.C.A.) on **30th March 2015**.
- 4.** AG`s return is sought in respect of the following allegations :
 - (i) On **9th February 2012** Possession of **300 grams of Cannabis** with Intent to Supply.
 - (ii) On **8th February 2012** Supply of **0.5 grams of Cannabis**.
 - (iii) On **9th February 2012** Supply of **1.8 grams of Cannabis**.
 - (iv) On **9th February 2012** Possession of **1.8 grams of Cannabis**.
- 5.** The Requested Person was arrested on **30th April 2015** and appeared at Westminster Magistrates Court on the same day when these proceedings were formally opened.

6. Matters regarding s.4 (preliminary issues relating to the EAW) and s.7 (identity) of the **Extradition Act 2003** (‘the 2003 Act’) were dealt with at the initial hearing and the proceedings were formally opened.
7. The Requested Person was granted conditional bail and has remained on bail throughout. She has been legally represented and assisted by a court appointed interpreter during the course of these proceedings.
8. I am satisfied that she has had sufficient opportunity to prepare for and deal with the issues that are pertinent to these proceedings.
9. This court gave directions for service of a Skeleton Argument / Statement of Issues / signed proof of evidence and experts reports/ other evidence relied upon by both parties. These Directions were **not** fully complied with.
10. At the full hearing, which took place on **24th August 2015**, the Requesting Judicial Authority was represented by **Darren Fox** of counsel, while **Kate O’Raghallaigh** of counsel appeared for AG.
11. The release of my Ruling was reserved to today.
12. During the course of the full hearing, the Requested Person gave live evidence and adopted her signed proof of evidence.
13. AG denies all the allegations that she faces, but questions of guilt or innocence are, of course, matters entirely for the Latvian criminal justice system. AG asserts that the charges laid against her are as a result of a vindictive attempt by her ex-husband to remove their children from her and into his custody.
14. AG recalls having been arrested on **9th February 2012** by the Latvian police investigating the allegations that are the subject matter of these proceedings. She had given birth to her daughter (born 3 months prematurely) only a few weeks before her arrest, and that she had been made to sign a confession by the Latvian police before being released on bail. She said that she had been given to understand that if she provided the police with information about certain criminal activity relating to her husband’s known associates, this matter would not proceed against her.

- 15.** AG told me that she first came to the UK in 2002 when she was 17 years of age. She remained here for 3 years having enrolled on an English course as well as having taken up some part time work as a cleaner. Her mother and sister had arrived in the UK a year or so before she did.
- 16.** AG returned to Latvia in 2008 and was married shortly thereafter. Their son Ivans was born later that year. Unfortunately AG's relationship with her husband quickly deteriorated as he is said to have developed serious issues with alcohol and controlled drugs. AG says that she suffered considerable domestic abuse at the hands of her husband until she decided to leave Latvia in 2009 with her son whereupon returned to live in the UK.
- 17.** AG told me that, a short while later, she again returned to Latvia from the UK and revived her relationship with her husband as he persuaded her that he had changed his ways and that he wished to keep the family together. Soon afterwards she again fell pregnant by him and their daughter Veronika was born in **late December 2011**.
- 18.** AG says that soon after Veronika was born, the relationship with her husband, once again, broke down and the serious episodes of domestic violence returned. Indeed she has produced medical records which demonstrate that she was admitted to hospital in Latvia as follows :
- (i) **29th February 2012.**
She informed this court that she had been seriously assaulted by her husband (although she covered for him by telling the hospital authorities that she had fallen). She had become unconscious and suffered unsightly bruising to her ribs and chest areas and she was provided with medication and a splint for injuries occasioned to her foot.
- (ii) **6th April 2012.**
She had again been assaulted by her husband (as she told the medical staff) on this occasion. She suffered a strain to tendons in her leg, as well as a `healing` fracture to her right foot, requiring an x-ray and treatment.
- (iii) **14th April 2012.**
She was again assaulted by her husband and suffered bruising to her chest and head as well as concussion. She again had an x-ray and treatment.

- 19.** AG also provided details of other episodes of disturbing acts of severe domestic violence that she says were carried out by her husband. She produced a photograph which graphically showed considerable disfigurement and swelling to her face on one such occasion back in **2010** when she suffered a broken nose, a broken rib and injury to her left ankle (as was also confirmed by Latvian hospital records).
- 20.** Albeit she (and her mother) had reported a number of incidents of domestic violence to the police, and although they had seen a number of her injuries, they did not arrest the husband. They told AG that as the property where they were then living was registered in his name, she would have had to be the one to leave. Indeed she recalled an occasion when the police assisted her by taking her to a women's refuge in the dead of night after one incident when her husband had assaulted her.
- 21.** The police candidly told AG that they would not be able to intervene in matters between husband and wife without an independent witness. AG said that she was then becoming very frustrated and anxious as her husband's behaviour was increasingly unpredictable and violent. She did not know what to do. Her mother and sister were living in the UK at the time and she was left isolated and depressed and powerless to prevent further attacks on her by her husband.
- 22.** As a result of her said injuries the Latvian police accepted that she was unable to report to them in accordance with her bail conditions for several weeks. AG stated that when her health improved, she resumed her 2 x weekly reporting obligations.
- 23.** As previously mentioned, she said that she had been pressurised by the Latvian police to provide them with information about her husband's associates, who were said to have been involved in gang-related drug-dealing. AG stated that, albeit she was frightened of the possible consequences, she did provide the police with whatever (limited) information she possessed.
- 24.** I found AG to have been an honest and compelling witness throughout the course of her testimony. I accept AG's evidence when she told me that she had been given a clear indication that the police would not pursue her in respect of the current allegations because of the helpful information that she gave them. She did, however,

acknowledge that she was never provided with anything in writing to confirm that the investigation was being discontinued.

25. Albeit she managed to change address on a number of occasions, AG said that her husband had been able to trace her and she came to the point that she felt compelled to hastily and furtively leave the country. The UK was the obvious place for her to settle as her mother and sister were settled here.

26. AG spoke with particular conviction when she told this court that she feared that her husband would try to kill her if he got the chance if he became aware of her intention to leave Latvia with their children. He is a Ukrainian national who does not possess a visa to come to the UK, as a result of which AG feels safe here.

27. AG told me that she was indeed able to escape to the UK with Veronika (she had arranged for her mother to bring Ivens here a short while earlier) and they have all lived here since **July / August 2012**. She has no desire to return to Latvia as she has begun a new life here with her children, free from the clutches of her manipulative ex-husband.

28. AG acknowledges that by leaving Latvia she did not keep to her reporting obligations to the Latvian police, nor did she inform them of her decision to leave the jurisdiction. I accept that she felt constrained to leave the country in fear of her life.

29. AG said that she also thought that her husband was able to influence or bribe the police in Latvia as he is a wealthy man with a ruthless streak. Although AG has not been able to produce any evidence to support such assertions of potential corruption by her husband, I accept that she had such fears. I am told that in 2003 he had been sentenced to a 5 year prison sentence for importation of a quantity of controlled drugs.

30. AG has understandable serious concerns for the welfare of her 2 children were she to be extradited. Ivens has certain troubling behavioural and emotional difficulties that are currently in the process of being dealt with. As an example, albeit he is 5 years old, he is said to have begun to talk only a few months ago. AG believes that this is as a result of the trauma he suffered when he witnessed repeated acts of domestic violence meted out to AG by her husband.

31. Galina Birzgale (‘GB’) is the mother of AG. She describes herself as a single person. She works full-time as a cleaner. She confirmed in her signed (unchallenged) witness statement that she came to the UK in 2003 with her youngest daughter Svetlana, who commenced University in the UK in September 2015.

32. GB said in her statement that she returned briefly to Latvia shortly after AG had given birth to her daughter Veronika. GB adds that AG looked ‘terrible’ as she had suffered a broken leg as well as multiple bruising at the hands of her husband. GB said that she was aware that, albeit complaints was made to the police, no action was taken against AG’s husband. She added that, in the event that AG is to be extradited, GB will do her best to look after her grandchildren, though she has some understandable reservations as to how she will manage and how the children will cope without their mother.

33. AG produces a psychiatric report prepared by Dr Andrew Forrester. He assesses that AG would ‘*be at risk of psychological harm should extradition proceed*’. He adds that as of the date of examination (**21st July 2015**), albeit AG was not then demonstrating suicidal tendencies, he states that ‘‘ there is a substantial risk that the removal of protective factors (her children) combined with a worsening in her symptoms - described as ‘*an adjustment disorder with a mild depressive disorder*’ - could cause the emergence of suicidal behaviour.’’

34. At the behest of this court (the decision of District Judge Snow in **May 2015**), Redbridge Local Authority prepared a s.7 assessment of the Children Act 1989 in respect of Ivans and Veronika. The report is dated **23rd July 2015**.

35. The report states that the current arrangements relating to the children are satisfactory. They reside with AG in a private rented property. They all live on the 1st floor while AG’s mother and sister occupy the ground floor. The author of the report notes that the children ‘‘*suffered significant harm as a result of living in an environment characterised by domestic violence, the effects of which are still evident to this day*’’. (para 8.1)

36. The author of the report prepared by LB Redbridge expresses concerns that in the event that AG has to return to Latvia, the children ‘‘*face the bleak prospect of being separated from the only parent and consistent care giver they have known since birth*

and this will inevitably cause them to suffer further significant harm` (para 8.5)

37. It has been suggested that it may be necessary to consider arranging for an assessment as to whether AG`s mother would be an appropriate carer. I am told that, if their grandmother were to be deemed unsuitable, then the children would need to be accommodated by the Local Authority, probably by means of long-term fostering.

38. In my view, however, such assessment does not appear currently necessary in view of the close and harmonious relationship between the children, their maternal grandmother and aunt, all of whom live in the same property (albeit on the ground and 1st floors respectively).

39. At the conclusion of the full hearing I acceded to a request made on behalf of AG to receive into evidence report from Graham Flatman an experienced clinical child psychologist. During the course of the day`s proceedings, I was informed that prior authority had been granted by the legal aid authorities for the preparation of that report and that he had seen AG, her children and their grandmother.

40. Mr Flatman`s report was received by this court shortly after the full hearing. I made further directions enabling counsel for both parties to make written submissions on that document.

41. The Requested Person raises s.21 (Article 8) as the sole challenge to her proposed extradition :

42. Article 8 Challenge

The Supreme Court decision of **Norris v Government of USA (2010) SC**, is regarded as an important ruling on Article 8 challenges.

43. In **Norris** the 9 man Justices of the Court unanimously held that the public interest in upholding bilateral extradition treaties would be “**seriously damaged**” if those who faced **serious** (as opposed to **trivial**) offences and who had families akin to **Mr Norris** were to preclude extradition from taking place. They made clear that the requested person would have to demonstrate that the impact of extradition went beyond the normal and often unfortunate consequences of extradition. The threshold is set high and there

would have to be “*striking and unusual*” facts for such a challenge to succeed.

44. It was accepted in **Norris** that the effect on close family members was relevant and could be a “*cogent consideration*” and indeed Lord Phillips stated in paragraph 65 “... *if extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge per s.87 of the 2003 Act*”. **Mr Norris** failed in his appeal and extradition was confirmed.

45. Article 8 challenges were subject to further scrutiny in 2012 by the Supreme Court in the decision of **HH v Italy (2012) UKSC 25**, which also gave important guidance in relation to the rights of dependent children.

46. Further very important guidance in Article 8 challenges was recently given by the Divisional Court in **Polish Judicial Authorities v Celinski and Others (2015) EWHC 1274**. That decision underlined the need for this court to embark upon a careful balancing exercise in weighing the matters raised in favour of and against ordering extradition, in an Article 8 context.

47. **Celinski** underscored the importance of this court bearing in mind that, as was set out at paragraph 9 of the Judgment of the Lord Chief Justice : *“the public interest in ensuring that 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. We would expect a judge to address these factors expressly in the reasoned judgment.”*

48. That decision also stated ... (paragraph 10) *“the decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect”*

49. At paragraph 39 of **Celinski**, the judgment of the court went on to say, importantly, that a proper balancing act needs to be carried out with detailed reasons to be provided..... *“The important public interests in upholding extradition arrangements, and in preventing the UK being a safe haven for a fugitive as Celinski was found to be, would require very strong counter-balancing factors before extradition could be disproportionate”*.

50. The court then went on to consider the serious nature of the offences that **Celinski** faced upon return, before adding ... ``*The counter-balancing factors in relation to his (Celinski`s) family life now, his age and sad personal circumstances behind the alleged offending, and the way he had turned his life around, are clearly insufficient.....`*

51. Each case has to be considered on a fact-specific basis and our courts are required to carefully weigh the requested person`s Article 8 rights (and those of his partner and any dependent children) against the important public interest in the UK abiding by its international extradition obligations.

52. It is important to bear in mind that there is **no** test of exceptionality to be applied.

53. Article 8 Balancing Exercise :

(a) Factors said to be in Favour of Extradition Being Granted :

- (i) There is a strong and continuing important public interest in the UK abiding by its international extradition obligations.
- (ii) The seriousness of the offences that AG faces, with a **minimum** sentence in Latvia of **5 years** to be served in the event of conviction.
- (iii) The assertion by the Judicial Authority that the requested person is a fugitive from Justice.
- (v) It is asserted that AG`s 2 children will, in all likelihood, be cared for either by their maternal grandmother and aunt. If not, then the Local Authority will become involved in accordance with their statutory obligations.

54.(b) Factors said to be in Favour of Extradition Being Refused :

- (i) The requested person has been settled in the UK since 2012 having fled serious and on-going domestic violence from her ex-husband.
- (ii) AG is the sole carer for her 2 young children, to whom she is very attached.
- (iii) It is said not to be certain that the children will, in fact, be cared for by their maternal grandmother and they may yet have to be put into foster care., and not necessarily together.
- (iv) The requested person submits that the offences alleged are said not to be **so** serious such that would inevitably result in an immediate prison sentence being imposed, if committed in the UK.
- (v) AG, through counsel, asserts that she is not a fugitive from justice

as she had no alternative but to flee Latvia in view of the domestic violence from which she suffered.

55. Article 8 Findings and Ruling :

Having considered the evidence and submissions in this case, find that it will be a disproportionate interference with the Article 8 Rights of AG and those of her 2 young children for extradition to be ordered.

My reasons and findings are as follows :

(i) It is very important for the UK to be seen to be upholding its international extradition obligations and I bear in mind that the UK is not to be considered a `safe haven` for those sought by other Convention countries either to stand trial or to serve a prison sentence.

(iii) In my opinion, the offences set out in the EAW are relatively serious and, in the event of a conviction in the UK for like criminal conduct, a prison sentence may well be imposed.

(iv) This court has to respect the fact that in Latvia she will face a prison sentence of at least 5 years – and potentially up to 15 years – upon conviction. It is not for this court to base its decision exclusively on the UK's own sentencing regime (per current Sentencing Guidelines) when considering requests from member States who may have a different sentencing policy.

(v) Albeit, this court finds that, strictly speaking, the requested person may be considered to be a fugitive from justice, in my view, she fled for very understandable reasons... fear of her life.

Whilst she acknowledges that she left Latvia in 2012 in breach of her ongoing reporting obligations and did not tell the authorities there of her intention to permanently leave the country, I accept her evidence that she was terrified of her husband's likely actions if he knew of her intentions to leave. What was she to do? She, and her mother, had repeatedly reported her husband's behaviour to the police to no avail. She had been hospitalised by him on several occasions and his behaviour - fuelled by the use of illicit drugs and alcohol – had made him increasingly unpredictable and dangerous.

(vi) AG and her children have been settled in the UK for just over 3 years during which time AG has led a law-abiding life. (v) The removal of AG from the lives of her 2 young children would, in my view be a catastrophic incident in their lives, from which they will struggle to recover. I also take into account the difficulties that Ivens has demonstrated, which should not be underestimated.

56. S.21 A (Proportionality / Compatibility)

In relation to a request based on an accusation warrant (as opposed to a conviction), the provisions of s.21A of the 2013 Act – as implemented by s.157 of the **Anti-social Behaviour, Crime and Policing Act 2014** need to be carefully considered.

This states :

s.21 A “Person not convicted : human rights and proportionality

(1) If the judge is required to proceed under this section (by virtue of s.11), the judge must decide both of the following questions in respect of the extradition of the person (“D”)-

(a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;

(b) whether the extradition would be disproportionate.

(2) In deciding whether the extradition would be disproportionate, the judge must take into account the specific matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.

(3) These are the specified matters relating to proportionality –

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

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

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

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

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

(b) that the extradition would be disproportionate.

(5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions-

(a) that the extradition would be compatible with the Convention rights;

(b) that the extradition would not be disproportionate.

57. I find as follows, in respect of s. 21A proportionality :

(i) The allegations set out in the EAW can be described as being serious, particularly the allegation of possession of cannabis with intent to supply. I take the view, however, that they are not the most serious to come before this court. If the alleged conduct were to have been committed in the UK it is almost certain that any prison sentence would be much shorter than the 5 year minimum term

available in Latvia.

(ii) I have not been made aware of any coercive measures, short of extradition, that would be appropriate, and I do not consider that there are any that apply to this case. (see, for example, **Volle v Germany (2015) EWHC 1484 (Admin)**).

58. In relation to s.21 A **proportionality**, as previously indicated, I therefore take the view that Extradition would be s.21 A disproportionate in this case.

59. In relation to s.21 A **compatibility**, I take the view that extradition would be compatible with AG's Convention rights. Latvia is a signatory to the European Convention on Human Rights and I accept that it would abide by its Convention obligations.

60. I have carefully considered the lengthy submissions, both oral and in writing, impressively made on behalf of both parties. I have also considered the live evidence that I have heard as well as all documents placed before me.

61. I order the discharge of the Requested Person **Alla Gerasimenko** to return to **Latvia** in respect of the matters set out in the EAW previously referred to.

62. Discharge is ordered in accordance with the provisions of s.21A (5) of the 2003 Act.

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District Judge (MC) John Zani

APPROPRIATE JUDGE

NOVEMBER 2015