

THE HIGH COURT

[2022] IEHC 384
[2021 No. 205 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

EDIJS KRIMELIS

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 5th day of May, 2022

1. By this application, the applicant seeks an order for the surrender of the respondent to the Republic of Latvia pursuant to a European Arrest Warrant dated 16th of April 2021 (“the EAW”).
2. The EAW was issued by Mrs S Petersone Prosecutor General’s Office of the Republic of Latvia, as the Issuing Judicial Authority.
3. The EAW seeks the surrender of the respondent in order to enforce a sentence of 2 years imprisonment imposed upon the respondent on the 14th of May 2015 day, of which 1 year 11 months and 28 days remains to be served.
4. The EAW was endorsed by the High Court on the 26th of July 2021 and the respondent was arrested on the 22nd of November 2021 and brought before the High Court on the 23rd day of November 2021, on foot of same.

5. I am satisfied that the person before the court, the respondent, is the person in respect of whom the EAW was issued. No issue was raised in that regard.

6. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended (“the Act of 2003”), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.

7. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which surrender is sought is in excess of four months’ imprisonment.

8. The EAW relates to one offence. The respondent provided other persons with information that enabled them to carry out a violent robbery of an elderly pensioner, he provided this information in contemplation of the robbery. I am satisfied that correspondence can be established between the offences referred to in the EAW and offences under the law of this State. The corresponding offence is robbery contrary to Section 14 of the Theft and Fraud Offences Act 2001.

9. Grounds of Objection

The respondent objected to surrender on the following grounds:

- i. The respondent awaits proof that the requirements of section 16(1)(c) and/or section 45 of the European Arrest Warrant Act, 2003, as amended, have been complied with.
- ii. Part B of the warrant states that a sentence of 2 years was imposed which was suspended for 2 years. The same part of the warrant states that the sentence was reactivated on 14th May 2015. Part C.3 of the warrant states that the remaining (sic) sentence to be served is 1 year 11 months and 28 days. In the circumstances, there is a lack of clarity as to whether reactivation of the

sentence on 14th May 2015 modified either the nature or quantum of that sentence.

- iii. Without prejudice to the foregoing, Part C.2 states that a sentence of 2 years was imposed. Part C.2 also states that the remaining sentence to be served is one year 11 months and 28 days. The difference in sentence imposed and sentence to be served has not been explained in the warrant. Counsel for the respondent confirmed that this point was not being pursued in light of the further information received on this issue from the Issuing Judicial Authority.
- iv. Further, or in the alternative and without prejudice to the foregoing, to Order the surrender of the respondent would expose the respondent to a real risk of a breach of his rights under Article 2 and/or 3 and/or 8 of the European Convention on Human Rights and/or his right to bodily integrity pursuant to Article 40.3.1 of the Constitution and/or Article 2 and and/or 3 and/or Article 4 of the Charter of Fundamental Rights of the European Union and as a consequence surrender of the respondent would be in breach of Section 37 of the European Arrest Warrant Act, 2003 due to, *inter alia*, the conditions and regime of detention, the management of same in the issuing State, the respondent's medical conditions and the treatment of same by the issuing State.
- v. Further, or in the alternative and without prejudice to the foregoing, to Order the surrender of the respondent would be a breach of, or a disproportionate interference with, his rights pursuant to Article 8 of the European Convention on Human Rights and/or his and/or his family's rights under Article 8 of the European Convention on Human Rights and/or the Constitution and/or Articles 7 of the Charter of Fundamental Rights of the European Union and as a

consequence surrender of the respondent would be in breach of Section 37 of the European Arrest Warrant Act, 2003.

10. Respondent's Affidavits

First Affidavit dated the 21st of February 2022

The respondent swore an Affidavit dated the 21st day of February 2022 wherein he averred the following:

- i. The respondent states that there were two instances in this case. At first instance he received a 3-year sentence which was suspended. On appeal this became a 2-year sentence, again suspended. He went to the Probation Service a number of times asking whether he needed to do anything, he was told that he did not need to do anything. He says that he came to Ireland in May 2014.
- ii. The warrant says that the sentence was reactivated on 14th May 2015. He was not aware of this hearing as he was in Ireland at the time .
- iii. He says that he is fearful of returning to Latvia because of his medical conditions. He believes that if he is returned he will not get appropriate treatment. Before he came to Ireland he did not get appropriate treatment in Latvia. For example, all he was given was diazepam to deal with the stress but nothing to manage his seizures. Without the proper medication he had black-outs and would fall over.
- iv. When he came to Ireland things changed and he was better able to deal with the conditions due to the help that he got from the various doctors here and the medication he received. He was initially with the Jervis Street Medical Centre and then changed to Dr. Caulfield in Donaghmede Shopping Centre. If he changed medication he would feel the effects within a month. Even on his medication he has issues; for example, sometimes his left hand goes numb.

- v. He says that his general practitioner Dr. John Caulfield has provided a letter dated 20th January 2022 where he outlines the side effects of the medication that he requires and the consequences of stopping the medication. He exhibits the letter of Dr. John Caulfield dated 20th January 2022 .
- vi. He says that there has been criticism of conditions of detention and medical treatment received in detention in Latvia. In this regard he refers the Country of Origin materials.
- vii. He says that he worked in a shop in Latvia. €7,000 went missing in stock. The owner of the shop Juris Bekersis was hiding from the Police. He came to his house saying that if he didn't give him €7,000 he would be beaten up. This was even though he had nothing to do with the lost inventory.
- viii. The Police were looking for information and Mr. Bekeris seems to think that the respondent gave them information. Mr. Bekeris is a man involved in criminality with contacts in the prisons. He is fearful that he will have the respondent beaten up in prison.
- ix. He says that he is not aware of caste system in prisons in Latvia but he is not a hardened criminal. It is his first time in prison and therefore he will not be high up.

Second Affidavit dated the 29th of March 2022

The respondent swore a supplementary affidavit dated the 29th March 2022 wherein he averred to the following:

- i. He says that he has considered the further information from the Issuing Judicial Authority.
- ii. He says that as stated in his affidavit of 21st February 2022 he came to Ireland in May 2014. Prior to this, he attended the Probation service on a number of occasions to no avail. As far as he was concerned there was nothing further he

could do. Any time he went, he was fobbed off and finally told that the file was lost.

- iii. He says that he would have preferred to undergo his time in probation as the thought of serving a prison sentence scared him and still does. He had nothing to gain by not engaging with them and an awful lot to lose. He tried his best to engage with the Probation service.
- iv. He lived at the address Medni, Vitniū pagasts, Auce novads, Latvija, LV-3721 until he went to the army in 2002. Prior to leaving the Issuing State in May 2014 he remained at the address 29A-5, Auce, Auce novads, Latvija, LV-3708.
- v. On arrival in Ireland he obtained a PPS number within a few days. In 2019 he went to the Latvian Embassy to get a passport and gave his address in Ireland, as 3 Grangegorman Park, Donaghmede, Dublin 13. The Latvian authorities have known of his address in Ireland since then. He went to the Latvian Embassy recently to seek paperwork related to this application but the Embassy refused to provide him with confirmation of his application. They said that this was private/confidential information.
- vi. The further information states that there was a hearing on 22nd January 2015. He was not aware of this hearing as he was in Ireland at the time.

Third Affidavit dated 28th of April 2022

A further supplemental affidavit was sworn on 29th March wherein the respondent averred to the following:

- i. He has three children (2 boys and 1 daughter) in Ireland, the oldest is 18 and works in McDonalds at the Airport.
- ii. He says that his oldest son supports him financially and helps with all domestic matters. He also accompanies him to medical appointments.

- iii. His younger son Daniel attends medical appointments with him when his older son is working. He has a good grasp of English.
- iv. Both boys attend medical appointments with him and help out where they can. He relies heavily on them, particularly when his illness takes a turn.
- v. He does not have any family in Latvia. His sister is in Lithuania, she left Ireland two years ago. His eldest child has stepped into his sister's shoes and has taken up the mantle providing for both care and finance for him.
- vi. His only other family member is his mother, she is 66 and a pensioner. They all reside in the same house.
- vii. He says that he does not have any link to Latvia anymore. He says that if he is returned to Latvia none of his children will go to Latvia.
- viii. He says that he attended the Beaumont Hospital at the start of February 2022 for a scan of his Brain. He has not seen the results of the scans as of yet and he has an appointment with his G.P. next week to review the scans. He also has an appointment with the consultant Neurologist in Beaumont Hospital (Professor Norman Delaney) on the 23rd August 2021, he exhibits this letter.
- ix. He says that his medical condition is currently very unstable. He experienced an epileptic seizure on the 26th of February 2022, this occurred at his family home and lasted for over 4 minutes, thankfully his family were on hand to help him during this episode. He says that since this episode his memory has faded and he experiences lapses in concentration.
- x. He says that he left Latvia due to his condition, where he was in receipt of €250 per month disability benefit.

xi. He says that the Probation services never contacted him despite engagement on his part. He attended the Probation Office on 3 occasions however he was told his file was 'lost'.

11. Relevant Medical Evidence

A General Practitioner's report was exhibited to the first Affidavit. The report is dated the 10th of January 2022, and Dr John Caulfield states therein;-

"In answer to you queries of the 17th January 2022.

Please see attached medications list. They are prescribed to control seizures. The Half Inderal LA is for headaches. Epilim can occasionally cause aggression, confusional state, hallucinations, agitation and disturbance in attention and very rarely, abnormal behaviour and psychomotor hyperactivity. Lamictal can cause aggression and irritability. Mr. Krimelis should be able to get these medications in any EC country but I would not be able to comment on the health system and pharmaceutical challenges in Latvia. If Mr. Krimelis stopped his medication, his seizures would probably recur. One can potentially suffer further brain injury and/ or die from uncontrolled seizure disorder. There are many anti-convulsant drugs available but whether they would control his seizures would be unknown.

Medication:

Epilim Chrono Cr 200mg Tabs Tabs 200mg NOCTE

Epilim Chrono Cr 300mg Tabs Tabs 300mg I mane

Epilim Chrono Cr 500mg Tabs Tabs 500mg AT NIGHT

Half Inderal La 80mg Pro Rel Caps Tabs 80mg ONE TO BE TAKEN DAILY

Lamictal 200mg Disp Tabs Profind TWICE DAILY

Medical History:

Epilepsy

Traumatic Brain injury, motorbike rta 2009 reqd surgery with insertion of Titanium plate”

12. The respondent’s previous solicitor swore an Affidavit indicating that the respondent would seek to postpone his surrender under Section 18 (1) (a) of the 2003 Act. Attached to that Affidavit, was a brief letter from the respondent’s General Practitioner Dr. Casey setting out his medication and indicating:

“His medication is Epilim Chromo....he is stable at present”.

13. Exhibited to the respondent’s first Affidavit are a number of reports dating back to 2015. One of the reports from Dr. Alan McCarthy Consultant Neurologist, dated the 20th of May 2015, states:

“[The respondent] informed us that six years previously, he had a road traffic accident on a motorbike. He remained in coma for 10 days afterwards and had a craniotomy performed with a titanium plate inserted in 2010 in Latvia for same....in terms of his medications he has been on Lamotrigine 200 mg BD since 2010, Elilim Chrono 500 mg at night since 2010 and Acetazolamide 250mg once per day on Wednesdays and Sundays which has been started in Mullingar in 2014....we suggested your team check a Lamotrigine level first and then to increase the Epilim Chrono to 300mg mane and 500mg nocte”.

This Court notes that Lamictal is one of the brand names of Lamotrigine.

14. Exhibited to the same Affidavit there is a summary report from Dr. Carmen Willa Sala and Professor Noman Delanty stating that *“nowadays he has perfect controlled epilepsy”*. This report is dated 16th August 2017 and is the most recent hospital report provided.

15. **Is surrender prohibited by Section 45 of the Act of 2003**

At Part D of the EAW, it is indicated that the respondent appeared at the hearing which

resulted in the decision which is sought to be enforced. This indication relates to the court of first instance. The two-year sentence was imposed on the 7th of February 2014 and was suspended on that date. On the 14th of May 2015 the Dobele District Court revoked the conditional sentence. In light of the lack of clarity in relation to the domestic proceedings and the points of objection raised, this Court raised a number of queries with the Issuing Judicial Authority. This resulted in additional information being furnished to this Court. From a review of the information contained in the EAW, as well the additional information received, this Court sets out the relevant chronology as follows:

- (i) On 7th of February 2014, the respondent was sentenced by Jelgava Court to 2 years imprisonment suspended for 2 years upon certain conditions.
- (ii) On the 22nd of January 2015 the Court extended the term of the Probation for a period of 6 months.
- (iii) An application to revoke the suspension of the sentence of imprisonment was brought by the probation service on the 14th of May 2015.

(An application can be brought by the Probation Services under section 158 of the Polish Sentences Execution Code to seek to have the original sentence executed or to extend the term of the probation for a period of up to one year).
- (iv) The respondent was present for the hearing on the 7th of February 2014;
- (v) The revocation of suspension of sentence was due to the failure of the respondent to comply with the terms and conditions of suspension and did not involve any change in the nature or length of the sentence of imprisonment initially imposed; and
- (vi) The respondent was not present at the revocation hearing on 14th of May 2015.

16. In *Ardic* (Case C-571/17 PPU), the Court of Justice of the European Union (“the

CJEU”) gave a ruling in the following terms:

“Where a party has appeared in person in criminal proceedings that result in a judicial decision which definitively finds him guilty of an offence and, as a consequence, imposes a custodial sentence the execution of which is subsequently suspended in part, subject to certain conditions, the concept of ‘trial resulting in the decision’, as referred to in Article 4a(1) of Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as not including subsequent proceedings in which that suspension is revoked on grounds of infringement of those conditions during the probationary period, provided that the revocation decision adopted at the end of those proceedings does not change the nature or the level of the sentence initially imposed.”

17. In *Minister for Justice and Equality v. Lipinski* [2018] IESC 8, the Supreme Court considered whether the absence of a respondent at a hearing which leads to the revocation of suspension of a sentence of imprisonment, engages the *in absentia* requirements of the Framework Decision. While the Supreme Court initially made a reference to the CJEU on the point, it transpired that such reference was unnecessary by virtue of the decision of the CJEU in *Ardic*. Clarke C.J., at para. 3.7 of the Supreme Court decision, held;-

“[3.7] It is clear, therefore, that a hearing at which a suspension of sentence is revoked on grounds of infringement of conditions attaching to that suspension is not considered to be part of a ‘trial resulting in the decision’ for the purposes of the Framework Decision unless the revocation decision changes ‘the nature of the level of the sentence initially imposed’. If the consequence of the revocation is to alter the sentence originally imposed then different considerations may apply.”

18. In this instance, the suspended sentence was simply activated due to a failure to comply with the conditions of suspension of sentence, without any change to the nature or level of the sentence initially imposed. In such circumstances, the hearing on 14th of May 2015 was not a ‘trial resulting in the decision’ for the purposes of article 4a of the Framework Decision, or s. 45 of the Act of 2003, and the requirements of those provisions do not have to be met as a precondition to surrender. I am satisfied in all of the circumstances that the defence rights of the respondent were respected and were not breached. I am satisfied that the first and second grounds of objection can be dismissed.

19. **Is surrender prohibited by Section 37 – Applicable principles**

Country of Origin Material relied upon by the respondent

In addition to the averments in his affidavit and in relation to his point of objection based on prison conditions the respondent, relied upon the following:

(i) The Report to the Latvian Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12th to 22nd April 2016, published 29th June 2017 the CPT was critical of healthcare:

Turning to the provision of health care to prisoners, the visit revealed that the health-care teams in most of the prisons visited were under-resourced. In particular, the CPT was concerned to learn that some establishments had not been attended by a general practitioner (e.g. Cēsis Correctional Institution) or by a dentist and a psychiatrist (e.g. Daugavgrīva Prison) for a very long time. The number of vacant posts was high, and, as acknowledged by the prison administration, the relatively low remuneration of staff did little to attract medical professionals to this challenging field. The Committee urges the Latvian authorities to give the highest priority to addressing the causes of the persistent problem of vacancies among medical personnel in prisons.

- The CPT was critical of the provision of medication to prisoners in Daugavgrīva Prison.

Particularly, the CPT said that:

...at Daugavgrīva Prison, the supply of medication appeared to be problematic, with only very basic medicines being provided to prisoners free-of-charge. In this regard, many prisoners complained that they depended on their families for the acquisition of most of the necessary medication. The CPT recommends that the Latvian authorities take the necessary steps to ensure that there is a sufficient supply of appropriate medication at Daugavgrīva Prison. It is essential that prisoners without resources are able to receive the medication that their state of health requires.

- The CPT noted that inter-prisoner violence remained a problem:

...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.

- This situation is contributed by lack of adequate staffing levels:

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. without saying that, with such low staffing

levels, it is scarcely possible to tackle effectively the problem of inter-prisoner violence.

- The CPT recommended 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.

- With regard to the Daugavpils Section of Daugavgrīva Prison, the CPT noted that material conditions were generally good but that in-cell toilets were not fully partitioned in multi-occupancy cells. The CPT recommended that steps be taken to remedy the situation. The CPT were highly critical of the Grīva Section of the prison, going as far as to say that conditions could be considered inhuman and degrading:

... most of the prisoner accommodation areas in the prison's Grīva Section were in an advanced state of dilapidation (e.g., crumbling walls, badly worn and sometimes even rotten floors, decrepit furniture, etc.) and severely affected by humidity due to the absence of a ventilation system. It is also a matter of concern that many cells had very limited access to natural light. Moreover, the in-cell sanitary facilities in a large number of cells were in an appalling state of hygiene. One of the very few positive points was that the minimum standard of 4 m² of living space per prisoner was observed throughout the establishment (prisoners being accommodated in cells for two to 15 inmates).

- With regard to Riga Central Prison:

...many cells in Blocks 1 and 2 were still in a poor state of repair and had only

limited access to natural light; further, in-cell toilets were often not fully partitioned. Material conditions were particularly poor in the admission cells located in Block 1, which had little access to natural light, dim artificial lighting, dirty walls and floors affected by damp, and filthy toilets...

The delegation was informed by the management that plans were afoot to refurbish the remainder of the prisoner accommodation at Riga Central Prison.

- With regard to regime, while the Latvian Government have stated in response that there are activities available the CPT was critical of the activities offered to the 60% of the prison population in Daugavgrīva Prison, who would spend 23 hours a day locked in their cells:

...the activities on offer were not sufficient given the large size of the inmate population. In particular, the great majority of prisoners who were on the low regime level had to spend up to 23 hours a day locked up in their cells, with very limited out-of-cell activities available to them: apart from daily outdoor exercise of one hour, they were offered one-hour sports/fitness sessions at best once a week and occasional team games... such a state of affairs is not acceptable.

(ii) United Nations, Committee Against Torture, Concluding Observations of the 6th Periodic Report of Latvia, 24th December 2019. At paragraphs 14 & 15 the Committee remained concerned that:

- (a) 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 the Griva section of Daugavgriva prison, which has the status of historic monument;*
- (b) The construction of the new prison in Liepāja has been postponed for*

budgetary reasons and the envisaged construction is due to be completed only in 2023;

- (c) The outdated prison infrastructure, whereby inmates are housed in very large cells that can hold more than 40 persons in old prison buildings, creates the conditions for inter-prisoner violence, a criminal subculture and hierarchical relations among the prisoners, especially in Daugavgrīva, Jelgava and Riga Central prisons;*
- (d) Places of deprivation of liberty have not been adapted for persons with disabilities, especially those with reduced mobility, who have to rely on help from other inmates, and there is a shortage of medical personnel;*
- (e) Inmates in many detention facilities do not have access to a meaningful regime of activities or to sufficient outdoor exercise;*
- (f) The number of medical staff is reduced and there are significant gaps in the provision of appropriate medication to prisoners (arts. 11 and 16).*

- In light of the foregoing, the Committee recommended that:

The State party should:

- (a) Continue to take steps to improve conditions in all prisons and police detention centres with regard to the material conditions of detention, including hygiene, sanitation, humidity, ventilation and access to natural light, with a view to bringing them into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);*
- (b) Consider closing additional detention facilities where conditions are particularly substandard, including the Grīva section of Daugavgrīva prison, which has the status of historic monument; ensure that the construction of Liepāja prison begins in 2020 and is completed on schedule*

by 2023; and adapt and renovate outdated prison infrastructure in order to reduce the number of cells that can hold large numbers of prisoners in order to reduce and prevent inter-prisoner violence and eradicate the criminal subculture;

- (c) Continue to renovate all places of detention in need of repair with a view to improving their infrastructure and material conditions, and ensure that they are adapted to the needs of persons with disabilities, especially those with reduced mobility;*
- (d) Strengthen the effectiveness of complaints mechanisms for reporting cases of violence; examine, record and investigate all injuries and deaths resulting from inter- prisoner or other violence, prosecute those responsible and prevent such incidents from recurring in the future by taking appropriate measures based on dynamic security principles; provide persons deprived of their liberty with adequate health care and medication; increase the number and remuneration of medical staff, including psychiatrists, and transfer the competence of penitentiary medical staff to the authority of the Ministry of Health;*
- (e) Improve the remuneration and working conditions and increase the number of custodial staff, in particular in Daugavgriva, Jelgava and Riga Central prisons, provide them with training on the management of inmates, and strengthen the monitoring and management of vulnerable prisoners and other prisoners at risk;*
- (f) Ensure that all inmates, including prisoners serving life sentences, have access to a meaningful regime of activities and sufficient outdoor exercise, and take further steps to integrate inmates serving life sentences into the*

general prison population.

(iii) In the European Prison Observatory, Prisons in European 2019 Report on European Prisons and penitentiary systems the following opening summary is provided by the authors:

The Latvian prison system is the legacy of the Soviet prison system, and consequently many problems as poor conditions, large dormitories, overcrowding of cells, strong internal prisoner hierarchies, and still - disrespect of human rights remain. Several prisons are located in buildings older than 115 years and have large dormitories accommodating up to 30 prisoners.

- The European Prison Observatory made the following observation regarding the conditions of detention:

Prison infrastructure remains dilapidated and many sections cannot be renovated. The majority of prisons are 115 years old and only two of nine were built as prisons.

Despite the decrease in the number of prisoners and reduction in occupancy rates in prison cells, inter-prisoner violence remains a problem, which is the result of insufficient staff presence in prisoner accommodation areas, the existence of informal prisoner hierarchies and the lack of purposeful activities for most inmates.

Access to health care in some prisons remains a concern as health-care teams in most of the prisons are under-resourced. The number of vacant posts is high, and the relatively low remuneration of staff does not attract medical professionals to work in prisons.

- In terms of the Prison regime, the European Prison Observatory noted (similarly to the CPT) that:

Although prisoner and employment and educational opportunities have increased, remand prisoners and the great majority of sentenced prisoners in the low regime level are usually locked up in their cells for up to 23 hours per day.

(iv) In the United States, State Department, Latvia Human Rights Report 2019 it is recorded that there were issues regarding conditions of detention:

Some reports regarding prison or detention center conditions raised human rights concerns. Prisoners complained about insufficient ventilation, hot water, hygiene, cleaning supplies, and insects.

Physical Conditions: The CPT noted in 2017 that specific detention facilities had deteriorating physical conditions and that interprisoner violence remained a problem at the Daugavgrīva, Jelgava, and Riga Central Prisons. Health care in the prison system remained inadequate with a shortage of medical staff. As of September, 8.4 percent of prison health-care positions were vacant.

In 2017 the CPT noted that most of the prisoner accommodation areas in the unrenovated Griva Section of Daugavgriva Prison were in poor condition and severely affected by humidity due to the absence of a ventilation system.

- The United States, State Department also noted the challenges with health care and the complaints made to the Latvian Ombudsman:

Through September the ombudsman received 32 complaints from prisoners regarding living conditions and 10 complaints about the availability of health care in prisons. The CPT noted in 2017 that most patients in the Olaine Prison Hospital Psychiatric Unit and a great majority of prisoners sentenced to maximum security at the Daugavgriva and Jelgava Prisons were locked in their cells for up to 23 hours a day.

(v) In the 2020 report the United States, State Department echoed the previous issues, including health care in the prison system remained inadequate with a shortage of medical staff. The State Department noted that the Ombudsman for Latvia received a number of complaints regarding conditions of detention, medical treatment and medication:

Through September the ombudsman received 23 complaints from prisoners regarding living conditions and 31 complaints about the alleged unwillingness of doctors to prescribe the medicine or to provide the type of treatment that the convict desired.

(vi) In the Executive Summary to the Annual report 2019 of the Ombudsman of the Republic of Latvia, the Ombudsman states that:

...the Ombudsman is very critical concerning the inability on part of the Government and the legislator to provide to medicine professionals the increased remuneration enshrined in the law. The question here is about availability of healthcare, viability of the industry and the country in general, rather than about the right of representatives of a certain industry to fair pay.

- The Ombudsman was not confident in the prison building programme:

Concerning enforcement of sentence in conformity with the concept of the 21st century, three aspects can be clearly outlined at present:

- 1) Security expectations of society,*
- 2) Understanding of the need for meaningful enforcement of sentence within the penitentiary system;*
- 3) Obstacles placed by the Government, the Parliament to prevent implementation of projects, as evident from periodical postponing of deadlines for construction of a new prison facility.*

(vii) In the Annual report 2020 of the Ombudsman of the Republic of Latvia, published 2021:

The ombudsman noted that there were about 500 applications made to the office in 2020 from prison facilities which included inter alia 26 complaints regarding Torturing, unhuman treatment, physical and emotional violence on the part of staff, 30 on living conditions, and 46 on The right to Medicinal aid. The Ombudsman stated that:

It is important to note that most of the applications originate from the largest prison facilities of Latvia: Daugavgrīva Prison and Riga Central Prison, and most of them are related to domestic matters. This certainly demonstrates that prison infrastructure remains inappropriate for ensuring enforcement of sentence/imprisonment in the conditions appropriate to human dignity, and the Ombudsman has activated this issue also to the government.

- The Ombudsman also raised issues with regard to the conditions of detention and regime at Jelgava Prison:

Subsequent to the visit to Jelgava Prison the Ombudsman drew attention to insufficient natural and artificial lighting, ventilation, overpopulation (in one dwelling area) and called for reviewing the duration of walks (more than hour a day).

- In Comments by the Ombudsman of the Republic of Latvia on the 7th National Report on the implementation of the European Social Charter submitted by the Government of the Republic of Latvia for the period 2016-2019, registered 13th July 2021, the Ombudsman cited the proper remuneration of health care professionals as an important issue:

Remuneration of health care personnel is essential not only for professionals working in the field. It is closely related to the right of the population to qualitative medicinal services in general. Contribution by medicine professionals deserves high appreciation and support, moreover, in the context with the current epidemiologic situation.

- The Ombudsman was of the opinion that the Government only provided half the funding that was promised for medical professionals and due to low salaries professionals were leaving Latvia:

With its high quality of medical education and low salaries, Latvia has been holding the position of a donor country for medical personnel already for several years. Rapid

negative dynamics of the total number of medical professionals at medical institutions can be marked. The low remuneration is the key reason. This problem is very acute for those employed in the health care while support on part of the Government is insufficient. The funding required to increase remuneration of medical professionals was included in the state budget for 2020 only in the amount of about 50% of what the Government had promised.

Notwithstanding that situation has improved in terms of timely availability of health care services, compared to the previous reporting period, a large part of patients still must pay for certain scheduled health care services (examinations, surgeries, etc.) normally funded from the state budget because of long waiting periods. One must wait even 122 days to consult, for example, an endocrinologist; from 67 to as much as 320 days to make a neurogram, and (inpatient) child psychiatry, that is currently an especially urgent problem, is also not timely available.

20. Assurances

Having considered the contents of the affidavit of the respondent and the country of origin material furnished to the Court, this Court sought a number of assurances from the Issuing Judicial Authority, including confirmation that the requested person will:

- “(a) be medically assessed on arrival into the custody of the Issuing State; and,*
- (b) be provided with appropriate medical treatment specific to his conditions, (including monitoring for adverse effects of medication and signs of onset of seizures associated with epilepsy) as necessary, at all relevant times during his detention.*
- (c) be provided with Epilim Chrono CR 200mg, 300mg and 500mg, Half Inderal La 80 mg Pro Rel Caps Tabs 80 mg, Lamictal 200mg Disp Tabs Profind or appropriate substitutes as necessary, at all relevant times during his detention.”*

21. The response dated 15th March 2022 can be summarised as follows:

Question	Response
1 Places of detention or likely detention	<p>Quarantine for up to 14 days in Riga Central Prison and thereafter at potentially Riga Central Prison, Jēkabpils Prison, Daugavgrīva Prison and Leipāja Prison. Section 50 (1) of the Sentences Execution Code of Latvia provides that “the sentence in open prisons shall serve the convicts for committing a less serious offences due to negligence if the custodial sentence has been imposed for a period not exceeding three years and previously they have not served a sentence in a prison or they have served a sentence in a prison and the criminal record for such a violation has been cancelled or extinguished in accordance with the procedures laid down by law.” This regime would seem to apply to the respondent, but this is to be determined by Chief of the Department and is dependent on the above factors but also medical security and crime prevention criteria and also the number of vacant places.</p>
2 General prison conditions:	(a) Personal Space:
(a) Personal space allocated to the prisoner	None of the above prisons are at full capacity. In Riga Prison the cells are single
(b) Sanitary and hygiene facilities	cells and measure between 7.2 and 8.25

- (c) Food standards
 - (d) Medical facilities
 - (e) Access to fresh air and daylight
 - (f) Out-of-cell time.
- square metres. In relation to the other prisons the the respondent will have no less than 4 square metres not including the space of the toilet.
- (b) The cells will have be guaranteed to be at 18 degrees temperature. Constant access to toilet facilities, showering no less than twice a week and access to toiletries.
 - (c) Hot food three times per day and a vegetarian offer.
 - (d) Prisoners have access to educational programmes, social behaviour programmes, work programmes, sport and leisure activities, religious and mental care activities, access to addiction support groups, access to psychologist or psychiatrist, specialist addiction groups, and social workers.
 - (e) Prisoners are entitled to at least one hour outside, this can be increased subject to medical needs.
 - (f) Prisoners spent a good portion of their time out of cells for educational, resocialization and regime events, meals, roll calls, daily

walks, rest time, use of gym, library. Cells have televisions.

3 Confirmation re cell size of 3 sq m The response at pg.3 states: “In a prison no less than (sic) 4 square metres will be ensured to E. Krimelis (not including the space of the toilet facilities”). (Emphasis added)

4 Please confirm that, if any suspected threat to the personal safety of the requested person is made known to the prison authorities, an assessment of that suspected threat will be carried out and, if found to be substantiated, reasonable steps will be taken to provide for the safety of the requested person while in detention. At pg 2, the Response states: “The Department herewith informs that if a person has any information about possible threats to life or health while in prison, such person must immediately notify it to a prison administration, that will check the received information and in case of jeopardy will take all required measures for prevention [of] the possible threats to life or death”.

5. Assurances re medical treatment The response sets out:

for Respondent with specific

reference to epilepsy medication

stated

1. The regulation of prison healthcare is governed by law: “Procedures for Ensuring the Health Care to Arrested and Convicted Persons” (Regulations No. 276)

2. A summary of Regulations No. 276 is set out including the provision of medication to prisoners free of charge.

Para 2.1 primary health care is provided by medical practitioners of a prison. Secondary health care provided by a medical practitioner of a prison or by the Prisons Hospital of Latvia but if a prisoner needs the health care services which cannot be provided in a prison or in the Prisons Hospital of Latvia then according to the medical indications – also in the medical institutions outside an imprisonment institution.

Para 2.4 of the Regulations allow for “medications, which are most effective and cheapest in terms of costs, assigned by the prison’s medical staff”.

3. Within 3 days of arrival in prison, a person is medically examined by a medical practitioner and the required medical tests and treatment will be assigned.

The response specifically states in relation to the Respondent:

“As regards to the list of medications mentioned in the request the Defendant informs that after the initial health examination the medical practitioner of a prison will assign the necessary treatment and medications according to the Paragraph 2.4. of the Regulations No. 276”.

22. It is clear that the response sets out the general regulations and specifically comments on the respondent including the last question regarding medical treatment for the respondent.

23. Though the Court’s third question was unanswered in a letter dated the 24th of April 2022, the Issuing Judicial Authority stated:

“As regards the question in respect of ensuring to E. Krimelis the medications prescribed by the medical practitioners of Ireland against epilepsy herewith I inform that it does not fall within the competence of the Court; it falls within the competence

of a respective imprisonment institution where the person will be remanded. Therefore the Court may not neither guarantee, nor confirm whether E.Krimelis will be provided with the respective medications or their equivalent while imprisoned”.

24. This Court also considered Regulations No.276 of the Cabinet of Ministers of the Republic of Latvia of 2 June 2015 which states:

"Procedures for Ensuring the Health Care to Arrested and Convicted Persons" stems out upon arrival to an imprisonment institution a person within three days since the arrival or immediately according to the instructions of duty-assistant of a Prison's Chief shall undergo the initial health examination."

25. In respect of the additional information received, this Court has also noted the information in relation to prison numbers:

- i. Riga Central Prison can ensure the closed and partially closed prison regime. The maximum number of prisoners that can be placed in Riga Central Prison is 1271, but the actual number as of the 14th March 2022 is 891.
- ii. Jēkabpils Prison can ensure the partially closed and open prison regime. The maximum number of prisoners that can be placed in Jēkabpils Prison is 422, but the actual number as of the 14th March 2022 is 298.
- iii. Daugavgrīva Prison can ensure the closed, partially closed and open prison regime. The maximum number of prisoners that can be placed in Daugavgrīva Prison is 1191, but the actual number as of the 14th March 2022 is 937.
- iv. Liepāja Prison can ensure the closed prison regime. The maximum number of prisoners that can be placed in Liepāja Prison is 180, but actual number on 14/03/2022 is 139

26. The relevant principles applicable to the court's consideration of the issue of prison

conditions are well established and set out in *ML v Generalstaatsanwaltschaft Bremen* (C-220/18), the Court of Justice stated at paras. 49 and 50;-

“[49] Both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law (judgment of today’s date, Minister for Justice and Equality (Deficiencies in the System of Justice), C-216/18 PPU, paragraph 36 and the case-law cited).

[50] Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but also, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the European Union (judgment of today’s date, Minister for Justice and Equality (Deficiencies in the System of Justice), C-216/18 PPU, paragraph 37 and the case-law cited).”

The Court of Justice continued at para. 59;-

“[59] Accordingly, where the judicial authority of the executing Member State is in possession of information showing there to be a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State, measured against the standard of protection of fundamental rights guaranteed by EU law and, in particular,

by Article 4 of the Charter, that judicial authority 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 concerned by a European arrest warrant. The consequence of the execution of such a warrant must not be that that individual suffers inhuman or degrading treatment (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 88).”

The Court further stated at paras. 60-64;-

“[60] To that end, the executing judicial authority must, initially, rely on information that is objective, reliable, specific and properly updated concerning the detention conditions within the prisons of the issuing Member State and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the European Court of Human Rights, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the United Nations (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 89).

[61] Nonetheless, a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of detention in the issuing Member State cannot lead, in itself, to the refusal to execute a European arrest warrant. The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people or certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subjected to inhuman or degrading

treatment in the event that he is surrendered to the authorities of that Member State (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 91 and 93).

[62] Thus, in order to ensure observance of Article 4 of the Charter in the particular circumstances of a person who is the subject of a European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is then bound to determine, specifically and precisely, whether, in the particular circumstances of the case, there are substantial grounds for believing that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Article 4, because of the conditions for his detention envisaged in the issuing Member State (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 92 and 94).

[63] To that end, that authority must, pursuant to Article 15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State. That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring detention conditions, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraphs 95 and 96).

[64] The issuing judicial authority is obliged to provide that information to the executing judicial authority (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 97)."

The Court further stated at paras 65-66;-

"[65] If, in the light of the information provided pursuant to Article 15(2) of the Framework Decision, and of any other information that may be available to the executing judicial authority, that authority finds that there exists, for the individual in respect of whom the European arrest warrant has been issued, a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, the execution of that warrant must be postponed but it cannot be abandoned (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 98).

[66] By contrast, in the event that the information received by the executing judicial authority from the issuing judicial authority leads it to rule out the existence of a real risk that the individual concerned will be subject to inhuman and degrading treatment in the issuing Member State, the executing judicial authority must adopt, within the time limits prescribed by the Framework Decision, its decision on the execution of the European arrest warrant, without prejudice to the opportunity of the individual concerned, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, if need be, the lawfulness of the conditions of his detention in a prison of that Member State (judgment of 5 April 2016, Aranyosi and Căldăraru, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 103). (Emphasis added)"

The Court continued at para. 78;-

“[78] It follows that the assessment which those authorities are required to make cannot, in view of the fact that it must be specific and precise, concern the general conditions of detention in all the prisons in the issuing Member State in which the individual concerned might be detained.

[...]

[87] Consequently, in view of the mutual trust that must exist between Member States, on which the European arrest warrant system is based, and taking account, in particular, of the time limits set by Article 17 of the Framework Decision for the adoption of a final decision on the execution of a European arrest warrant by the executing judicial authorities, those authorities are solely required to assess the conditions of detention in the prisons in which, according to the information available to them, it is actually intended that the person concerned will be detained, including on a temporary or transitional basis. The compatibility with the fundamental rights of the conditions of detention in the other prisons in which that person may possibly be held at a later stage is, in accordance with the case-law referred to in paragraph 66 of this judgment, a matter that falls exclusively within the jurisdiction of the courts of the issuing Member State.”

The Court went on at para. 110;-

“[110] In accordance with those provisions, the executing judicial authority and the issuing judicial authority may, respectively, request information or give assurances concerning the actual and precise conditions in which the person concerned will be detained in the issuing Member State.

[111] The assurance provided by the competent authorities of the issuing Member State that the person concerned, irrespective of the prison he is detained in in the issuing Member State, will not suffer inhuman or degrading treatment on account of the actual

and precise conditions of his detention is a factor which the executing judicial authority cannot disregard. As the Advocate General has noted in point 64 of his Opinion, a failure to give effect to such an assurance, in so far as it may bind the entity that has given it, may be relied on as against that entity before the courts of the issuing Member State.

[112] When that assurance has been given, or at least endorsed, by the issuing judicial authority, if need be after requesting the assistance of the central authority, or one of the central authorities, of the issuing Member State, as referred to in Article 7 of the Framework Decision, the executing judicial authority, in view of the mutual trust which must exist between the judicial authorities of the Member States and on which the European arrest warrant system is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of Article 4 of the Charter.

[...]

[114] As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.

[...]

[117] Having regard to all the foregoing considerations, the answer to the questions referred is that Article 1(3), Article 5 and Article 6(1) of the Framework Decision must be interpreted as meaning that when the executing judicial authority has information showing there to be systemic or generalised deficiencies in the conditions of detention in the prisons of the issuing Member State, the accuracy of which must be verified by the referring court in the light of all the available updated data:

- *the executing judicial authority cannot rule out the existence of a real risk that the person in respect of whom a European arrest warrant has been issued for the purpose of executing a custodial sentence will be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter, merely because that person has, in the issuing Member State, a legal remedy permitting him to challenge the conditions of his detention, although the existence of such a remedy may be taken into account by the executing judicial authority for the purpose of deciding on the surrender of the person concerned.*
- *the executing judicial authority is required to assess only the conditions of detention in the prisons in which, according to the information available to it, it is likely that that person will be detained, including on a temporary or transitional basis;*
- *the executing judicial authority must assess, to that end, solely the actual and precise conditions of detention of the person concerned that are relevant for determining whether that person will be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter;*
- *the executing judicial authority may take into account information provided by authorities of the issuing Member State other than the issuing judicial authority, such as, in particular, an assurance that the individual concerned will not be subject to inhuman or degrading treatment within the meaning of Article 4 of the Charter.”*

27. Decision:

In *ML* the CJEU determined that if there is a finding of a real risk of inhuman or degrading treatment by virtue of the general conditions of detention in the issuing Member State such a finding cannot lead, in itself, to a refusal to execute a European Arrest Warrant. The mere existence of evidence that there are deficiencies, which may be systemic or

generalised, or which may affect certain groups of people or certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subjected to inhuman or degrading treatment in the event that he is surrendered to the authorities of that Member State.

28. This Court, having considered the country of origin material, received evidence of the existence of such deficiencies that were objective, reliable, specific and properly updated. In line with the *ML* two-step test, this Court was then bound to determine, specifically and precisely, whether, in the particular circumstances of this case, there are substantial grounds for believing that, following the surrender of a person to the issuing Member State, that person will run a real risk of being subject, in that Member State, to inhuman or degrading treatment. To that end, this Court requested of the judicial authority of the Republic of Latvia that it be provided, as a matter of urgency, with all necessary supplementary information on the conditions in which it is envisaged that the respondent will be detained in that Member State.

29. In relation to the assurances provided this Court is mindful of para 114 of *ML* which states;-

“[114] As the guarantee that such an assurance represents is not given by a judicial authority, it must be evaluated by carrying out an overall assessment of all the information available to the executing judicial authority.”

30. The concept of an overall assessment of all of the information available was considered the judgment in *Minister for Justice and Equality v Harrison* [2020] IECA 159 wherein Ms Justice Donnelly stated at para. 72;-

“[72] The M.L. case specifically dealt with the provision of information by the executive branch of the Member State as distinct from the issuing judicial authority (or any judicial authority). The relevant portions of the judgment have been set out above. The appellant also relied upon para. 104 to demonstrate that the process of obtaining

additional information is a dialogue between the issuing and executing Member States. In my view, the manner in which the CJEU ruled in M.L. makes clear that information may be provided by the issuing State and is not required to only be provided by the issuing judicial authority:

‘The executing judicial authority may take into account information provided by authorities of the issuing Member State other than the issuing judicial authority, such as, in particular, an assurance that the individual concerned will not be subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter.’

Thus, the CJEU was satisfied that there was no general restriction on the provision of information by a non-judicial authority of the issuing Member State.”

31. Donnelly J. continued at para. 81;-

“[81] It is of course the position that the CJEU in M.L. specifically referred to mutual trust in the context of information coming from the issuing judicial authority and stated that it must be relied upon. In the context of an assurance coming from another source, the executing judicial authority had to carry out its assessment in light of all the information presented to it. That is not a statement by the CJEU that mutual trust does not apply between Member States. On the contrary, the difference in the approach between the judicial assurance and the assurance by a State organ reflects the uniqueness of the mutual recognition system which operates at a high level of mutual trust between judicial authorities. There is always a level of mutual trust between Member States, but an executing judicial authority is bound to give information provided by a non-judicial authority greater scrutiny than information provided by another judicial authority.”

32. The information on this issue is provided by the acting Chief Colonel Lieutenant of the

Latvian Department of Imprisonment Institutions. Regarding the information that is provided by a competent authority of the Republic of Latvia, it has not been suggested, by way of evidence or by way of submission, that this institution is inherently unreliable or is specifically unreliable in the present case. I am satisfied that significant weight and confidence can be placed in the information provided, coming as it does from an emanation of the Latvian state which has specific responsibility for the administration of prisons. I find no reason to doubt the knowledge, competence or *bona fides* of the person who has provided the information.

33. This Court has been furnished with the specific and clear assurances by the issuing state as set out above in relation to the prospective conditions of detention of the respondent. In particular, this Court has been assured that this particular respondent will be assessed by a medical practitioner within three days of his arrival, that he will be provided with medication free of charge should that assessment deem it necessary. The Issuing Judicial Authority cannot definitively state that he will receive the medicine he currently receives in this jurisdiction. To do so, would be to supervene the Latvian domestic laws in relation to the rights of Latvian prisoners, which require the assessment of prisoners before medicine can be prescribed. This Court is satisfied with the quality of the assurance provided by the Latvian Department of Imprisonment Institutions in this regard.

34. It should be noted that the respondent has not adduced any information that suggests that the respondent's medicines will not be available in Latvia. In fact, the medical reports suggest that some of these medicines were available and prescribed to the respondent in Latvia in 2010. This is consistent with the report from Dr. Caulfield in which he indicated that the respondent's medicines should be available in any country in the EU.

35. In this regard, the respondent referred this Court to a judgment in the case of *MJE .v. Machaczka* (Unreported, High Court, Edwards J., 12th October 2012). In this case, Mr Justice Edwards received written and oral evidence in relation to the respondent's severe mental health

condition. The respondent was an individual who was at a very serious risk of attempting suicide due to a mental health condition. Clear medical evidence was provided to the court, from the respondent, confirming that the type of medicine that he was taking was ‘olanzapine’. That evidence confirmed that the respondent was responsive to this medicine and that it reduced his risk of suicidal ideation. There was clear evidence proffered by the respondent that the Polish state, for medicinal licensing reasons could not offer him the same medicine that he received in Ireland. The medical evidence confirmed that other anti-psychotic medications that he could receive upon surrender to Poland had proven in the past to be ineffective. Notwithstanding this, Mr Justice Edwards was not satisfied that Articles 2 and 3 of the ECHR were engaged, and took the view that even if they were engaged, the Court was not satisfied that there were substantial grounds for believing that if the respondent were returned to the requesting state he would be exposed to a real risk of being subjected to a breach of his right to life as guaranteed under Article 2 ECHR, or of being ill-treated contrary to Article 3 ECHR. Surrender, however, was refused on the exceptional circumstances of the case under Article 8 grounds in circumstances where in addition to his medication, the court had medical evidence confirming that the support of his family was important for the maintenance of the respondent’s mental stability. The court concluded that in the truly exceptional circumstances of the case it would be a disproportionate interference with the rights of the respondent and of his family under article 8 ECHR to surrender the respondent.

36. In the case of the respondent, there is no such medical evidence confirming the importance or otherwise of the respondent’s family support and what he avers to in his affidavits falls far short of the type of evidence in the *Machacza* case. Perhaps more importantly, there is no evidence provided by the respondent to even suggest, much less confirm, that he will not be afforded the or same or equivalent medication in Poland that he receives in this jurisdiction, upon his surrender.

37. In relation to the Country of Origin Material opened by the respondent, the significant criticism that pertains to the prisons relevant to the respondent date back to 2016, 2017, 2019 and 2020. This Court has read all of the reports furnished and makes the following observations:

- i. The CPT report to the Latvian Government dated 29th of June 2017 related to a visit to Latvia that occurred in April 2016, some 8 years ago. There were positive aspects to the report, including the comment that the delegation received full cooperation during the visit, that the prison population had decreased by some 1000 inmates as compared to the Committee's visit in 2013 when it stood at approx. 4,400. The Daugavpils Section of the Daugāvrīva Prison had recently undergone a major refurbishment, the delegation observed certain improvements at Jelvava Prison and Riga Prison was undergoing rolling refurbishment. At paragraph 79 of the report it stated that health care facilities were generally found to be satisfactory in all the establishments visited. Further at paragraph 82 it is stated that in all the establishments visited, medical screening on admission was performed by a doctor or nurse usually within 24 hours of admission.
- ii. In relation to the CAT report from 2019, in addition to the critical aspects of the report, this court notes that the committee welcomed Latvian initiatives to revise its legislation and policies in areas of relevance to the Convention. The Committee also noted positive changes in so far as it noted:
 - a. Amendments to the Code on the execution of Sentences concerning the minimum space per inmate.
 - b. The closure of Dobele, Zemgale and Vecumnieki prisons.
 - c. Renovation of 21 Police Detention facilities.

- d. Olaine Prison Hospital opened a drug rehabilitation centre and increased its capacity.
- e. Reconstruction of the juvenile detention centre in Cesis.
- iii. The 2019 Report from the European Prison Observatory notes that the prison population has continued to decrease. With the exception of noting that the Griva Section of the Daugavpils Prison remains dilapidated, other criticisms made are not prison-specific.
- iv. The Latvia 2019 and 2020 Human Rights reports repeat the findings of the 2017 CPT report and the Ombudsman Reports which serve as the sources of the information.
- v. While the Ombudsman's Annual Report 2020 indicates that 46 inmates complained of the right to medicinal aid. These complaints would appear to be relatively small in number when one considers the prison population in Latvia.
- vi. In addition and after the first oral hearing dealing with prison conditions, the respondent referred the Court to the Latvian Human Rights report of 2021 which states:

“Through September the ombudsman received 17 complaints from prisoners regarding living conditions, particularly insufficient ventilation and 11 complaints regarding doctors alleged unwillingness to prescribe medicine convicts desired.”

In relation to the latter, which appears to be the most recent report available, this Court observes that there is no evidence that the medicine prescribed to the respondent is included in these complaints or indeed, if these complaints relate to any of the prisons where the respondent will be sent, or indeed whether the

complaints were deemed to be well-founded. Therefore, this and other reports must be read in light of the requirement under *ML* that this Court:

“...is required to assess only the conditions of detention in the prisons in which, according to the information available to it, it is likely that that person will be detained, including on a temporary or transitional basis further he executing judicial authority must assess, to that end, solely the actual and precise conditions of detention of the person concerned that are relevant for determining whether that person will be exposed to a real risk of inhuman or degrading treatment.”

38. The Court also considered the response of the Latvian government dated 29th of June 2017 to the CPT report. At page 12 of that report, the Government indicated:

“In regard to government decisions, it is planned to undertake long-term prison infrastructure reform in Latvia, building new prisons and simultaneously closing the old prisons.”

At page 23 of the report it states:

“In 2015 and 2016 the Administration independently performed measures to improve the situation in ensuring the completion of medical positions at penal institutions. The above will continue in the future”.

At page 24 of the report it states:

“The administration informs that emergency medical assistance for prisoners and medical assistance in acute cases, including for minors, is organised and provided at all penal institutions around the clock...up to now there were no cases registered when the emergency medical assistance or medical assistance for acute cases was provided with delay”.

At page 25 of the report it states:

“The Medical Departments of penal institutions and the Latvian Prison Hospital employ different types and ranges of medicines in treating prisoners. Sub-section 2.4 of the Cabinet of Ministers Regulations No. 276 of 2 June 2015 “Procedure for Administering Healthcare to Convicts and Detainees” specifies that a prisoner freely receives, among others, the most efficient and cost-efficient medicine prescribed by the medical employee of the penal institution. In view of the above, the physician of the penal institution, having assessed the health condition at the particular period of time, prescribes the medicines necessary for treatment. All physicians working at penal institutions are certified, they have respective competences in their qualification, which enables them to perform quality treatment, including deciding on medicine. Moreover, following the terms of normative acts in Latvia, in the treatment, physicians can use only medicines registered in Latvia.

We inform that, for treatment at the medical establishments of penal institutions, medicines are used which can be purchased in the Electronic Purchase System, and, if the medicine prescribed for treating a prisoner cannot be purchased via the above system, the medicine is acquired from wholesalers. The Administration indicated that, following medical indications, there are no restrictions for using the medicine. In practice, the physicians of medical establishments of penal institutions use 352 various medicines for treatment of prisoners which are bought via the Electronic Purchase System and from wholesalers, and approximately 90 medicines, which are purchased from the public-sector drugstores as compensated medicines. In all, 440 medicines of various titles are used for treating prisoners.

We likewise inform that the Medical Department of Daugavgrīva prison, following the Committee indications on the insufficient range of medicines, performed actions for

increasing the range of medicines. In all, the Medical Department of Daugavgrīva prison used 334 titles of medicines for treating prisoners.”

The response continues and states that according to articles 10, 11 and 12 of the Cabinet Regulations no 276:

“Provision of healthcare to incarcerated persons

A medical personnel performs initial health check of prisoners within three days after arrival or immediately upon request of the staff. If an incarcerated person is transferred to Latvian Prison Hospital, a physician on duty performs initial health check of an incarcerated person within two hours after arrival or immediately upon request of the deputy warden.” As evidenced, either a physician or physicians assistance consults all prisoners arriving to Daugāvgriwa or Jelgava prisons within 24 hours. In 2016 there were no cases when check was delayed.”

39. In summary, whilst there were of course significant criticisms of the prison conditions in Latvia, particularly in the CPT report from 2017, the response from the Latvian government indicated an awareness of said problems and a desire to effect change. Subsequent reports indicated continued problems but also significant improvements. It is acknowledged that the most recent Human Rights Report of 2021 indicated a number of complaints relating to lack of medicinal care. As noted above, however, these were small in number and were not directly related to either the prisons, or indeed the medicines prescribed to the respondent. The assurances from the Issuing Judicial Authority must be looked at in light of the foregoing.

40. In his supplemental affidavit, the respondent avers that his medical condition is currently unstable. He exhibits an appointment letter with Professor Delanty or Dr Naggar, dated the 31st August 2021 and an appointment for the 23rd August 2022. There is no further evidence confirming that his condition is currently unstable and such a suggestion is not borne

out in his GP's report, or indeed by any other reports, going back to 2015, which were provided to and considered by the Court.

41. The respondent referred the Court to the case of *Jasnskis .v. Latvia*, Application No. 45744/08 (Judgment of 1st of December 2010). This Court acknowledges the principles applied in the case, namely, that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. However, the facts of this case involved events that occurred in a police station, when a young man was not afforded appropriate treatment for fractures of the frontal parietal and occipital bones of the applicant's sons cranium. The injuries caused the boy's death, and the events occurred in 2005, therefore is of limited assistance to the respondent.

42. Counsel for the respondent refers to the case of *to JL .v. Latvia*, Application No. 23893/06 (17th April 2012) wherein the court stated at para. 87;-

“[87] Even if the applicant primarily complains of the lack of effective investigation into the alleged ill-treatment rather than the absence of a reasonable preventive mechanisms in the circumstances concerned, the Court notes the lack of sufficient coordination among the investigators, the prosecution and the detention institutions to prevent possible ill-treatment of detainees who, owing to cooperation in disclosure of criminal offences, have become particularly vulnerable and prone to violence in prison.”

In this case, the Court determined that the conduct of the national authorities and the manner in which they applied the domestic law in response to the applicant's claim of ill-treatment failed to comply with the State's procedural obligations deriving from Article 3 of the Convention. Again, this case is of limited assistance to the respondent as once more this case relates to events that occurred in 2006. Further, while the respondent avers that he is would be at risk, he adduces no actual evidence of such a risk. The averments that he is at risk, in this

Court's view, amount to speculative assertions and are met with the specific assurances from the Latvian Department of Prison Institution. The respondent was not in a position to refer this court to any recent judgement of the ECHR involving Latvian prison conditions.

43. An oral submission made on behalf of the respondent by counsel, during the hearing whereby he stated that three days awaiting medical attention may be too late for the respondent. This Court is cognisant of the fact that such an assertion is not borne out by the medical evidence and indeed Section No.276 of the Cabinet of Ministers of the Republic of Latvia of 2 June 2015 allows for immediate assessment according to the instructions of duty-assistant of a Prison's Chief. Nonetheless this court also had regard to an email dated the 30th March 2022 which was received by the Chief State Solicitors Office from Sergeant James in response to this oral submission which stated: "A. Kirwan of NCBI's Extradition Unit in response to a query relating to whether the respondent would be able to take sufficient quantities of medication with him to sustain him for his extradition and transfer to Latvia. Therein, he affirmed;-

"We have encountered this on many previous occasions.

I can confirm that there will be no difficulty with the respondent being allowed to take with him any medications as prescribed for him when he is surrendered. The medications will be handed to the escorting officers and travel with him to Latvia to be so administered in accordance with the Latvian medical officials wherever he is held."

44. Having reviewed and evaluated all of the information before the Court, I am not satisfied that there are substantial grounds for believing that, if surrendered, the respondent is at a real risk of being subjected to inhuman or degrading treatment contrary to Article 3 ECHR or Article 4 of the Charter of Fundamental Rights of the European Union by virtue of the likely conditions of his detention. On foot of the additional information furnished by the Latvian authorities, I am satisfied that, if surrendered, adequate provisions will be made for the

respondent's medical and other needs while in detention. I am satisfied that the respondent will be afforded access to adequate medical care while detained in the issuing state and, in particular access to appropriate medication. The respondent has not indicated what medicines in particular he did not receive when in Latvia between 2009 and 2014, and no expert evidence of any form has been adduced to this Court indicating, much less confirming, that the medicines he is currently prescribed are not available in Latvia.

45. It should be noted that s. 4A of the Act of 2003 provides for a presumption that Member States will comply with the requirements of the Framework Decision unless the contrary is shown. The Framework Decision incorporates respect for fundamental rights. On considering all of the evidence before the Court, I am satisfied that the presumption in s. 4A of the Act of 2003 has not been rebutted. Bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine if surrender of the respondent would be incompatible with the obligations of the State under the ECHR, the protocols thereto, or the Constitution. I am satisfied that surrender would not be incompatible with such obligations. This ground of objection is dismissed.

46. Is surrender prohibited by Section 37 – Family life &

Alleged Delay

The sentence in this case was activated on the 14th of May 2015. The EAW was issued on the 16th of April 2021. The Issuing Judicial Authority confirmed that it was not issued until April 2021, because the information on possible whereabouts of Edijs Krimelis in the Republic of Ireland from the State Police of Latvia was only received on the 5th of November 2020. The Issuing Judicial Authority confirmed that the Zemgale District Court, on 13th November 2020, decided to circulate a wanted notice in relation to the respondent. On 15th December 2020 the Issuing Judicial Authority confirmed that the domestic court received the letter from the State Police of Latvia with the proposal to issue the European Arrest Warrant in respect of the

respondent. Zemgale District Court, on 7th April 2021, sent to the International Cooperation Division of the Prosecutor General's Office of the Republic of Latvia, the proposal on issuing the European Arrest Warrant. It was duly issued 9 days later.

47. Breach of Probation Bond

The respondent averred that the State Probation Service of Latvia has not contacted him, and that he was told that his probation file was lost. In light of same, additional information was sought from the Issuing Judicial Authority and the Issuing Judicial Authority advised this Court as follows:

“The Service in its submission has set out that according to the Section 155 of the Sentences Execution Code of Latvia to the convict during the probation period were laid down the following obligations:

1. To register with the State Probation Service within ten working days after entering into force of the Court ruling (Judgment came into force on 5 June 2014).
2. To appear before the State Probation Service at time laid down by the official of the State Probation Service.

The convict had to appear for registration with Dobele Territorial Unit of the State Probation Service of Latvia until 18 June 2014, but Edijs Krimelis failed to appear.

As the convict has not appeared before the Service until 18 June 2014, the official of the Service sent to the address of residence of convict declared at that moment - Raiņa iela 29A-5, Auce, Auces novads, Latvija, LV-3708, the summons to appear before the Service on 3 July 2014 at 9.00 o'clock, but in case if the appearance is not possible - to inform the official of the Service about it by the telephone. The convict did not appear before the Service after

the serving of the mentioned summons, as well as he did not inform the official of the Service about the non-appearance.

In addition to mentioned summons to the convict were sent in total three warnings: on 8 July 2014, on 24 July 2014 and on 26 January. By the warnings the convict was notified that in case of his unjustified non-appearance the Service will apply to the Court with the submission on the enforcement of the sentence imposed to the convict by the judgment or on extending of the probation period up to one year. The Service sent the warnings to the following two addresses: Raiņa iela 29A-5, Auce, Auces novads, Latvija, LV-3708, and "Medņi", Vītiņu pagasts, Auces novads, Latvija, LV-3721. The convict has never appeared before the Service after the serving of the summons and warnings of the Service.

After the taking of Dobeles District Court decision of 22 January 2015, by which the probation period imposed to the convict was extended for six months, the Service on 18 February 2015 sent to both known places of residence of Edijs Krimelis the summons to appear before the Service. On 3 March 2015 the Service sent to both known places of residence of convict the warning to appear before the Service on 23 March 2015 at 9.00 o'clock and informed that in case of non-appearance the Service will ask the Court to take a decision on the enforcement of the sentence imposed to the convict by the judgment. The convict has not appeared before the Service after the serving of the mentioned summons and warning.

From the information available to the Court stems out that the convict has never appeared before the State Probation Service of Latvia neither upon the summons of the Service, nor its warnings, as well as the Court has not any

information that his file would have been lost”

48. The respondent’s personal circumstances

This Court has carefully considered the respondent’s medical condition and family circumstances. This Court takes into account the averment of the respondent to the effect that his sons, particularly his eldest son, assist him in the payment of bills, his language difficulties, bringing him to and from medical appointments and generally assisting when he is unwell. This Court also takes into account matters urged on the respondent’s behalf, namely:

- i. The sentence imposed was initially suspended.
- ii. This was not reactivated due to commission of further offences but rather, a failure to engage with the probation services.
- iii. He is in fear of reprisals if returned to the Issuing State.
- iv. The respondent has been in Ireland since May 2014.
- v. His family reside in this jurisdiction.
- vi. His son Daniel also suffers from epilepsy.

49. Legal principles - Delay/Article 8

The Supreme Court set out the test which must be applied where an application for surrender is opposed on the grounds of Article 8 of the ECHR in *MJE v Vestartas* [2020] IESC 12 MacMenamin J. stated at para 89;-

“[89] Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent’s private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues. The High Court judgment holds that there had been a significant dilution of the public interest which would ordinarily apply (para. 37). It posed what was characterised there as a modified and weakened public

interest in surrender, evidenced by the elapses of time and other factors. Against this, it posed the private and family factors in the case (para. 38). But for the reasons set out above, there was a misapprehension as to the nature of the assessment. This is not a balancing exercise where public and private interests are placed equally on the scales. It is nonetheless necessary to have regard to the circumstances.”

MacMenamin J. went on to state at para 94;-

“[94] The contrast with the exceptional facts in J.A.T. is plain. For an Article 8 defence to succeed, it can only be on clear facts based and cogent evidence. The evidence must be sufficient to rebut the presumption contained in s.4A of the Act (see, para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s.37(1), they must be such as would render an order for surrender—incompatible with the State’s obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself.”

50. In *The Minister for Justice and Equality -v- Smits* [2021] IESC 27, the Supreme Court stated at para. 62;-

“[62] Dealing with the issue of the elapse of time, McMenamin J. noted indications that the trial judge might have thought this could in itself suffice to defeat an EAW application, by reference to the decision of this Court in Finnegan. However, the decision in Finnegan had clearly been limited to the unusual facts of that case. Delay could not alter the public interest considerations unless it reached a point where it was so lengthy and unexplained as to amount to an abuse of process, or to raise other constitutional or ECHR issues. On the facts in Vestartas, delay was a matter of

legitimate concern but was to be viewed against the background of private and family circumstances that fell very far short of those in J.A.T. (No.2).”

51. In *Minister for Justice and Equality -v- D.E.* [2021] IECA 188, Ms Justice Donnelly stated at para. 67;-

“[67] The questions certified by the High Court were as follows: “In the context of proceedings under the European Arrest Warrant Act 2003 as amended, where a respondent objects to surrender on the basis that same is precluded by s. 37 of the said Act as it would be in breach of the respondent’s rights under art. 8 ECHR and having particular regard to the provisions of art. 8(2) ECHR:

1. Can personal or family circumstances, in and of themselves, provide a basis upon which surrender might be precluded by s. 37 of the Act of 2003?

2. What is the appropriate test to be applied by the Court in determining whether such an objection is sustained and that surrender should be refused?

3. In so far as exceptionality may be a relevant factor in determining such an objection, what is the appropriate test to be applied by the Court in determining whether the circumstances found to exist are so exceptional as to justify refusal of surrender”

For the reasons set out in this judgment, it is appropriate to answer all three questions by repeating the principles set out at para 59 above:

- (i) In an application for surrender, the court is not carrying out a general proportionality test on the merits of the application. The court should apply the specific terms of the 2003 Act, albeit subject to a careful consideration of whether, if necessary, applying a proportionality test to Article 8 Convention rights, to order surrender would involve a violation of that ECHR right to the extent of being incompatible with the State’s obligations under the Convention. (Vestartas).*

- (ii) *Surrender (or extradition) presupposes an impact on the personal or family life of a requested person. Having regard to Article 8(2), surrender (or extradition) carried out pursuant to legislation is in principle an acceptable interference with the right to respect for those rights. (Ostrowski, JAT (No. 2), Vestartas).*
- (iii) *When faced with an Article 8 objection to surrender, the function of the Court is to decide if the surrender is incompatible with the State's obligation under the European Convention on Human Rights. That requires a very high threshold. Any inquiry must bear in mind that s. 10 requires a court to surrender in accordance with the provisions of the 2003 Act and s. 4A of that Act obliges the court to presume that the issuing state has complied and will comply with its fundamental rights obligations. (Vestartas).*
- (iv) *The evidential burden of proving incompatibility lies on the requested person. (Rettinger and Vestartas).*
- (v) *The assessment of the claimed impact of surrender on personal and family rights must be a rigorous one. (Rettinger and JAT (No. 2)).*
- (vi) *The evidence must be cogent and must reach the level of incompatibility (Vestartas).*
- (vii) *Exceptionality is not the test for incompatibility, but it will only be in a truly exceptional case that surrender will be found to be incompatible with the State's obligations under Article 8 of the Convention. (JAT No. 2 and Vestartas).*
- (viii) *For an Article 8 objection to succeed, there must be clear cogent evidence sufficient to rebut the presumption in s. 4A of the 2003 Act. (Vestartas).*
- (ix) *No elaborate factual analysis or weighing of matters is necessary unless it is clear that the facts come close to a case which would be truly exceptional in nature*

thereby engaging the possibility that surrender may be incompatible with the State's obligations under the Convention. (JAT (No.2)).

- (x) The requirement that the circumstances must be shown to render the order for surrender incompatible with the State's obligations under Article 8 necessitates that the incursion into the private and family rights referred to in Article 8(1) is such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself. (Vestartas).*
- (xi) Where the facts, assessed as set out above, come close to being truly exceptional in nature thereby engaging the possibility that surrender might be incompatible with the State's obligations, the Court will engage in a proportionality test of whether the high public interest in the prevention of disorder and crime (and the protection of the rights of others) is overridden by the personal and family circumstances (taken where appropriate with all the cumulative circumstances) of the requested person. That is a case-specific analysis which will be required in very few cases."*

52. Decision

In this case, the respondent deliberately left the Republic of Latvia in violation of a court order that he was fully aware of, to comply with probation supervision. The additional information explains that the information on the possible locations of the respondent in this jurisdiction was received by the domestic court from the Latvian State Police on the 5th of November 2020. The additional information further states that immediate steps were taken to seek to issue an EAW. There is no suggestion made by the respondent that the Latvian authorities were or should have been aware of his whereabouts from 2015 until 2020. In this Court's view there is no significant delay in this matter, much less egregious delay.

53. This Court has considered the respondent's family and medical circumstances. The evidential burden of proving incompatibility lies with the respondent and the evidence must be cogent and must reach the level of incompatibility sufficient to rebut the presumption in s. 4A of the 2003. The respondent is, of course, deserving of sympathy in light of his family and medical circumstances but these circumstances are not beyond the norm. There is, in this Court's view insufficient evidence to rebut the presumption under s. 4A of the 2003 Act. This ground of objection is dismissed.

54. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.

55. It, therefore, follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the Republic of Latvia.