Neutral Citation Number: [2023] EWHC 997 (Admin)

Case No: CO/335/2023

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/05/2023

Before :

LADY JUSTICE NICOLA DAVIES
MR JUSTICE JULIAN KNOWLES

- -

Between :

MARIAN DORIN POJEGA	**Appellant**
- and –	
BIHOR COURT (ROMANIA)	**Respondent**

- -
- -

Rebecca Hill (instructed by **Tuckers Solicitors**) for the **Appellant**
Reka Hollos (instructed by **CPS**) for the **Respondent**

Hearing date: **25 April 2023**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 5 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is an appeal under Part 1 of the Extradition Act 2003 (EA 2003) against the order for the Appellant's extradition to Romania made by District Judge Clews on 24 January 2022. I granted permission on 11 January 2023.

2. The single ground of appeal on which permission was granted is in relation to Article 3 of the European Convention on Human Rights (the ECHR) in relation to prison conditions. Other challenges to the Appellant's extradition arrest warrant have now fallen away.

3. Article 3 provides that. 'No-one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The test is whether the defendant has shown that there are strong grounds for believing that, if returned, s/he will face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment contrary to Article 3: see *R (Ullah) v Special Adjudicator* [2004] AC 323, [24].

4. It is well-established that prison conditions in a requesting extradition state can lead to a violation of Article 3. In particular, it was held by the European Court of Human Rights in *Mursic v Croatia* [2017] 65 EHRR 1 that, in order to comply with Article 3, an individual must, in prison, have an individual sleeping space in the cell, of at least $3m^2$ of floor space.

5. The risk of an Article 3 violation on account of prison conditions can be removed by an appropriate assurance from the requesting state.

6. This appeal was stayed pending the judgment of the Divisional Court in the lead cases of *Marinescu and others v Udecatoria Neamt* (Romania) [2022] EWHC 2317 (Admin), considering the adequacy of the Romanian assurances which had been offered in that case. Judgment was handed down on 12 September 2022. The appeals were dismissed, and the assurances offered about prison conditions were found to be sufficient to dispel any risk of a violation of Article 3. We will return to this decision later.

7. This appeal concerns an assurance from Romania from December 2022 (the December assurance) offering certain guarantees about the treatment the Appellant will receive in Romania if he is extradited.

8. In a helpful 'Statement of Position' dated 12 April 2023 Ms Hill on behalf of the Appellant set out her client's position as follows: (a) he makes no concessions regarding the admissibility of the December assurance and invites the Court to rule upon its admissibility, however no submissions in opposition are to be advanced; (b) should the Court refuse the Respondent's application, the Appellant will maintain that, for the reasons addressed in *Marinescu*, the assurance served at first instance is inadequate to address the real risk of inhuman and degrading treatment by reason of prison conditions in Romania.

9. At the hearing on 25 April 2023 we granted the Respondent's application dated 7 February 2023 to admit the December assurance. Ms Hill realistically accepted that if

we were to take that course, then she could not advance any positive submissions on the substance of the appeal.

10. We dismissed the appeal, and said we would put our reasons in writing for admitting the assurance and for dismissing the appeal. This we now do.

11. For the reasons which follow I was satisfied that it was in the interests of justice to admit the December assurance, and that it does dispel any risk of an Article 3 violation, and for that reason the appeal should be dismissed.

Factual background

12. The Appellant has been convicted of one offence in Romania, namely that between 2014-2015, he took bribes. He was sentenced to four years and six months imprisonment, all but one day of which remains to be served.

13. The background to the offence, in brief, is that the Appellant was a police officer in Bihor County who, at the relevant time, acting together with another, requested and obtained sums of money from the drivers of two vehicles that had been stopped under the pretext of having committed road traffic violations (namely, speeding) in exchange for the return of their travel documents and the payment of sums of money.

14. The Appellant was summoned to court and appeared in person for his trial. It appears the first hearing took place on 12 June 2015, at which the arrest decision was 'verified' and he was placed under house arrest. He was then found guilty on 2 December 2020 at Bihor Court and was sentenced to five years imprisonment.

15. That decision was made final by the Oradea Appeal Court on 22 July 2021, which reduced the sentence to four years and six months imprisonment. The arrest warrant which forms the basis of these extradition proceedings was issued the same day.

Background to this appeal

16. In the court below one of the grounds on which the Appellant resisted extradition was Article 3/prison conditions.

17. The district judge addressed that argument at [51]-[66] of his judgment. At that point the Respondent was relying on an assurance dating from September 2021 in relation to the Appellant.

18. At [51]-[52] the judge said:

> "51. In relation to Article 3 it is for the RP [requested person, ie, the defendant] to show that there are substantial grounds for believing that, if returned to Romania he will face a real risk of treatment which violates Article 3. The test was encapsulated in the case of *Elashmawy v Brescia Italy* [2015] EWHC 28 (Admin) at para 49 "Article 3 imposes absolute rights, but in order to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. In general a very strong case is

required to make good a violation of Article 3. The test is a stringent one and it is not easy to satisfy."

52. It was held in the case of *Mursic v Croatia* [2017] 65 EHRR 1 that in order to comply with Article 3 an individual must, in prison, have an individual sleeping space in the cell, must have at least 3 sq m of floor space and the overall floor surface of the cell must be such as to allow detainees to move freely between furniture. [see *Ananyev v Russia*] *Mursic v Croatia* also held that where personal space in multi occupancy accommodation falls below 3 sq m there is a strong presumption of a violation of Article 3 but the presumption can be rebutted if reductions in the required minimum space are 'short, occasional and minor'; there is sufficient freedom of movement outside the cell and adequate out of cell activities; and the person is held in what is, when viewed
generally, an appropriate detention facility and there are no other aggravating aspects of the conditions of his detention."

19. He continued at [53]-[56]:

"53. There is a strong, but rebuttable, presumption that a signatory to the European Convention will abide by its obligations. In *Grecu v Romania* [2017] EWHC 427 (Admin) the RP sought to avoid extradition on grounds relating to prison conditions. The JA submitted the court could rely strong presumption that Romania would fulfil its Convention obligations. The court did not accept that submission and found it had been rebutted by the pilot judgement of the ECtHR in the pilot judgement of *Rezmives v Romania* delivered on 25.7.17. It further found, on the facts, the assurances given by the JA did not guarantee sufficient personal space in accordance with *Mursic*. Since *Rezmives*, in all cases involving extradition to Romania it has been necessary for a prison assurance to be provided.

54. There have since been a number of cases in which assurances in relation to Romanian prison conditions have been considered culminating in the recent case of *Adamescu v Romania* [2020] EWHC 2709 (Admin). It is of note that the Court in hearing the appeal allowed fresh evidence to be given by 2 persons who had recent experience of prison conditions in Romania both of whom had been extradited to serve sentences in 2017. The judgement refers to recent decisions of the Divisional Court which upheld assurances given by Romania in the cases of *Scerbatchi v Romania* [2018] EWHC 3612 (Admin) and *Baia Mare Court v Varga and Turcanu* [2019] EWHC 722 (Admin). At paragraph 165 of the judgement (jointly given by Holroyde LJ and Garnham J) their Lordships said "In this case the respondent has not attempted to put forward clear evidence of a material improvement in prison conditions generally, such that the view

taken in *Rezmives* should no longer be followed. In those circumstances the appellant was, and is, able to show that, absent sufficient and reliable assurances by the respondent, there are strong grounds for believing that he would, if returned to Romania, face a real risk of treatment which violates Article 3. It is therefore necessary to focus, in considering this ground, on whether the respondent has given assurances which satisfy the court that the appellant will be held in conditions which comply with Article 3."

55. Their Lordships added at paragraph 170 "It is in our view implicit in [the DJ's] judgement that he recognized that the respondent could not rely on a presumption of compliance with Article 3 in relation to prison conditions and that appropriate assurances were necessary."

56. It is therefore beyond doubt that in cases involving Romania a prison assurance is required. Such has been the case since the pilot judgement in *Rezmives* (see below). A prison assurance has been provided, dated September 2021."

20. At [57]-[59] he said of the September 2021 assurance:

"57. The assurance states the RP would be taken, on arrival at Bucharest airport, to Rahova prison, where he would remain for a period of 21 days quarantine. He would be guaranteed individual personal space of a minimum of 3sq m. Thereafter he would, in all probability, be transferred to a prison with a 'closed' regime, probably at Oradea prison. He may possibly later be transferred to a semi open regime at Satu Mare prison, before progressing to the fully open regime in the same prison. No evidence of conditions in these prisons has been put before me and no evidence of over-crowding in any of them has been adduced.

58. The assurance sets out that in each prison and in each regime there is proper heating and ventilation, individual beds and bedding, furniture for storage and for dining purposes. Adequate heating, lighting and sanitation, including running water, are all provided.

59. Opportunities for activities and other time including for exercise outside of the cell are provided for for upto 4 hours per day, with a minimum of 1 hr exercise (walking). The district judge said he was satisfied that that assurance had been given in good faith; that it was a document upon which he could rely; and that it complied with the requirements set out in *Muršić v Croatia* (2017) EHRR 1, [93]-[94] which requires, in summary, a prisoner be afforded a minimum of $3m^2$ of personal space. We will return to to *Muršić* in a moment. The district judge held at [65] of his judgment that it was, 'clear Romania understands its obligations

> and responsibilities and I have an assurance it will comply with them which appears solemn and sincere'."

21. Following the order for the Appellant's extradition, on 13 May 2022 Collins Rice J made an order in the following terms:

> "3. The application for permission to appeal on Ground 2 [in relation to prison conditions] is stayed pending the judgment of the Divisional Court in the lead cases of *Rusu, Varlan and Marinescu*. The Appellant shall, within 14 days of the date on which the judgment of the Divisional Court is handed down, inform the Court and the Respondent whether he intends to pursue his application for permission to appeal on this ground. If he does, the following directions apply:
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> a. The Appellant must, before the end of that 14 day period, file and serve written submissions setting out his case for doing so.
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> b. The Respondent shall, within 7 days of service of those submissions, file and serve any submissions in response."

22. Judgment in *Marinescu* was handed down on 12 September 2022, as we have said. There were a number of appellants before the Court. The appeal concerned, in particular, the adequacy of an assurance from a Dr Halchin, Commissioner of Correctional Police and General Director of the National Administration Penetentiaries (NPA) to Dr Onaca in the Ministry of Justice. There were other assurances also. Dr Halchin's letter was dated 4 March 2022.

23. The various assurances in *Marinescu* were described as follows (see [13-17]):

> "13. It is common ground that, if returned to Romania, each appellant will be held in the quarantine and observation section at Rahova for an initial period of 21 days. Thereafter, each will be allocated by the National Administration of Penitentiaries (NPA) to a prison of the appropriate regime, taking into account proximity to his place of residence. It is probable that Marinescu will serve his sentence in open conditions at Iasi; Rusu will serve part of his sentence in semi-open conditions at Botosani, from where he is likely to be transferred at a later stage to open conditions at Iasi; and Varlan will serve part of his sentence in semi-open conditions at Vaslui, from where he too is likely to be transferred to open conditions at Iasi.
>
> 14. As has been indicated, each of the DJs accepted that adequate assurances had been provided by the respondents. Those assurances were given in letters from Prison Police Commissioner Fabry, Director of the Directorate for Prison Safety and Execution Regimes, to Dr Onaca, Director of the Directorate for International Law and Judicial Cooperation in the Romanian Ministry of Justice.

15. By the time of the hearing of the appeals, those assurances had been supplemented in each case by a letter dated 4 March 2022 written by Chief Commissioner of Correctional Police Paun, Director of the Directorate for Detention Security and Prison Regime, and addressed to Dr Onaca in the Romanian Ministry of Justice. Each of the letters is in similar terms. They state that during the quarantine and observation period at Rahova, each appellant 'will benefit from at least 3m² of personal space', will have the right to walk for 2 hours daily and will have access to a number of other activities outside the detention room. Details are given of the shared detention rooms at Rahova, including the size of the rooms, the lighting and heating, the toilet rooms, the furniture and the availability of drinking water. Each letter included an assurance expressed in the following terms:

> 'In consideration of the perspective of implementing the measures from the "Action Plan for the period 2020-2025, drafted in order to execute the pilot judgment Rezmives and others against Romania, as well as the judgments delivered in the group of cases Bragadireanu against Romania", as well as the number of detainees currently guarded by the National Administration of Penitentiaries, following the criminal policies adopted by the Romanian state, the National Administration of Penitentiaries guarantees the provision of a **minimum personal space of 3m²** while serving the punishment, **including the quarantine and observation period**, which includes bed and afferent furniture, without including the space for the toilet room.' [emphasis as written]

16. The respondents rely in addition on a letter, also dated 4 March 2022 and bearing the same reference number as Chief Commissioner Paun's letters, from Dr Halchin, Commissioner of Correctional Police and General Director of the NPA, to Dr Onaca in the Ministry of Justice. Dr Halchin's letter provides further information about the conditions in the quarantine and observation section at Rahova and includes the following assurance:

> 'In consideration of the perspective of implementing the measures from the "Action Plan for the period 2020-2025, drafted in order to execute the pilot judgment Rezmives and others against Romania, as well as the judgments delivered in the group of cases Bragadireanu against Romania", as well as the number of detainees currently guarded, **the National Administration of Penitentiaries guarantees that the prison punishment, including the quarantine and observation period, will be served in decent**

> **conditions which respect human dignity.**" [emphasis as written]
>
> 17. The appellants contend that the assurances, even as supplemented on 4 March 2022, are inadequate to exclude the real risk that their art. 3 rights will be infringed by the conditions of their detention."

24. The Court held these assurances, including in particular Dr Halchin's letter, to be adequate to protect the appellants' Article 3 rights:

> "52. … Our focus must therefore be on the assurances provided in the letters, including those from Commissioner Fabry, Chief Commissioner Paun and Dr Halchin, to which we have referred …
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> …
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> 55. In the present appeals, the various letters from Commissioner Fabry which were before the DJs must now be read in conjunction with the subsequent letters of Chief Commissioner Paun and Dr Halchin. We reject the submission that, individually and collectively, these amount to no more than information or description. In our view they not only describe the conditions and regimes at the prisons concerned, but also guarantee (in Dr Halchin's letter) that each appellant will be detained throughout "in decent conditions which respect human dignity". We therefore reject the submission that the Respondents have given no "undertakings, in the proper sense of the word.
>
> …
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> 58. We are unable to accept the appellants' submission that the guarantee given in Dr Halchin's letter is 'vague'. On the contrary, it is in our view clear. It could no doubt have been made clearer still, by using the language of art.3, and/or by dealing with specific aspects of the accommodation in the prisons. However, if a prisoner is held in conditions which, through a combination of limited space and poor material conditions, violate his art. 3 rights, it could not be said that he was detained "in decent conditions which respect human dignity". Conversely, if he is held in "decent conditions which respect human dignity", it could not be said that he was "subjected to torture or to inhuman or degrading treatment". The guarantee given by Dr Halchin is therefore, in our view, an assurance that the conditions of the appellants' detention will not violate their art. 3 rights. The assurance applies to the prisons, and the regimes and accommodation, described in the other letters, and it is not necessary for the Respondents to provide further detail. The assurance is plainly intended to be, and is, binding as between the

> UK and Romania; and any breach of it could be expected to have significant consequences for relations between the two countries in relation to extradition matters."

25. Following receipt of this judgment, the Appellant complied with Collins Rice J's order, and indicated that the Article 3 challenge was maintained.

26. The CPS on behalf of the Respondent unfortunately did not comply with the order. On 14 November 2022 it served Dr Halchin's 4 March 2022 *Marinescu* letter but without the requisite EX244 application notice. This was not filed until 8 December 2022. The reasons why do not matter.

27. I granted permission on 11 January 2023. I said that it was arguable that the assurance from September 2021 offered in this case was inadequate

28. On 7 February 2023 the Respondent applied to admit the December assurance to replace the September 2021 assurance which was before the district judge. Ms Hollos made clear that reliance was no longer placed on Dr Halchin's letter of 4 March 2022 and, in so far as the application to admit it made on 8 December 2022 had not yet been determined, it was withdrawn.

Ground of appeal: Article 3

29. The December assurance that has been provided in the case before us runs to several pages and it is detailed. It specifies, for example, that on arrival in Bucharest, the Appellant will be initially incarcerated in the Rahova Prison, Bucharest, where he will undergo a quarantine period of 21 days in a room with a minimum space of $3m^2$. It states that all detainees who are in the quarantine and observation period are included in a multidisciplinary programme which has a number of aims, including identification and assessment of the needs of each detainee from an educational, psychological and social perspective with a view to developing specialised recommendations. All such detainees are entitled to two hours a day out of their cell. Many other details of the conditions of his incarceration (including post-conviction) are set out.

30. At Section G the assurance states:

> "… The National Administration of Penitentiaries guarantees that the prison punishment, including the quarantine and observation period, will be served in decent conditions which respect human dignity."

31. Ms Hill accepted that the December assurance is in materially identical terms to Dr Halchin's 4 March 2022 letter which was held to be sufficient in *Marinescu*. The real issue, therefore, was whether we should admit it. As I have said, Ms Hill accepted that if it is admitted it disposes of the appeal.

Legal principles regarding receipt of assurances

32. In its judgment of 20 October 2016 in *Mursic¸* the Grand Chamber of the European Court of Human Rights, having reviewed its previous case law, said at [137-139]:

> ‘137. When the personal space available to a detainee falls below 3 sq m of floor space in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space. …
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> 138. The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:
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> (1) the reductions in the required minimum personal space of 3 sq m are short, occasional and minor …;
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> (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities…;
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> (3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention…. .
>
> 139. In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.’

33. Assurances have been required in extradition proceedings to Romania to dispel any real risk of treatment contrary to Article 3 since *Grecu and Bagarea v Romania* [2017] EWHC 1427 (Admin) and the pilot judgment of the European Court of Human Rights in *Rezmives and others v Romania* (Application nos 61467/12, 39516/13, 48231/13 and 68191/13).

34. There was no dispute between the parties as to the applicable legal principles in relation to the receipt of assurances. They were helpfully summarised in Ms Hollos’ ‘Application to Admit Fresh Assurance and Further Submissions on Article 3’ of 7 February 2023 at [15]-[18], with which Ms Hill agreed, and from which the following is adapted.

35. The High Court has an inherent jurisdiction to receive fresh evidence or information (including an assurance) from a respondent to an extradition appeal: *FK v Stuttgart State Prosecutor's Office, Germany* [2017] EWHC 2160 (Admin),[39]. The criteria in s 27(4) of the Extradition Act 2003 (EA 2003) and those set out in *Szombathely City*

Court, Hungary v Fenyvesi [2009] 4 All ER 324, [28]-[35], do not apply to respondents seeking to admit fresh evidence: *FK* at [34]-[35].

36. The key applicable test is whether it is in the interests of justice to admit the material in question.

37. In exercising its jurisdiction, the availability of the fresh evidence in the sense discussed in *Fenyvesi*, that is whether it was available in the lower court or with reasonable diligence could have been obtained, is still a relevant factor but is only one of several material considerations: *FK*, [40].

38. Assurances can be served at various stages of the proceedings including on appeal. In *Florea v The Judicial Authority Carei Courtbouse, Satu Mare County, Romania*, [2015] 1 WLR 1953, the Divisional Court adjourned the appeal inviting Romania to provide an assurance. In *Dzgoev v Prosecutor General's Office of the Russian Federation* [2017] EWHC 735 (Admin), at [68], [87] the Court considered a later assurance even where an earlier assurance was found to be defective. The court expressly set out in an annex 'a draft of the nature of the further assurances we have in mind.'

39. Assurances do not have the status of evidence in the sense that term is used in the EA 2003. The nature of assurances was considered by this Court - presided over by the Lord Chief Justice - in *Government of the United States of America v Assange* [2021] EWHC 3313 (Admin). In that well-known case the district judge had discharged Mr Assange because of the risk of suicide she found would exist if Mr Assange were to be extradited to the United States. On appeal, the United States offered various assurances relating to the conditions in which Mr Assange would be held if extradited, and other matters.

40. Mr Assange argued that the Court should not accept the assurances. Among the arguments advanced on his behalf, it was submitted that by offering the assurances at a late stage the United States was trying to change its case, and that it was too late to do so. It was also said that the criteria for the receipt of fresh evidence on appeal established in *Municipal Court of Szombathely v Fenyvesi* [2009] 4 All ER 324 had not been met. Mr Assange relied on the statement in *Fenyvesi* at [35] that the appeal court will not readily admit fresh evidence which should have been adduced before the lower court and which is tendered to try to repair holes which should have been plugged before that court.

41. At [39]-[42] of its judgment the Court said this:

> "39. A diplomatic note or assurance letter is not 'evidence' in the sense contemplated by section 106(5)(a) of the 2003 Act: it is neither a statement going to prove the existence of a past fact, nor a statement of expert opinion on a relevant matter. Rather, it is a statement about the intentions of the requesting state as to its future conduct: see *USA v Giese* [2016] 4 WLR 10 at paragraph [14]. For the purposes of section 106(5), an offer of an assurance at the appeal stage is an 'issue': see *India v Chawla* [2018] EWHC 1050 (Admin) at [31].

40. In *India v Dhir* [2020] EWHC 200 (Admin), a Part 2 case in which the issues related to article 3 of the Convention, at paragraphs [36] and [39] the court said –

> '36. The court may consider undertakings or assurances at various stages of the proceedings, including on appeal, and the court may consider a later assurance even if an earlier undertaking was held to be defective: see *Dzgoev v Russia* [2017] EWHC 735 at paragraph 68 and 87 and *Giese v USA (no 4)*.
>
> …
>
> 39. Where a real risk of inhuman and degrading treatment is established, it is not appropriate to discharge the requested person but to enable the requesting state 'to satisfy the court that the risk can be discounted' by providing assurances, see *Georgiev v Bulgaria* [2018] EWHC 359 (Admin) at paragraph 8(ix). If such an assurance cannot be provided within a reasonable time it may then be necessary to order the discharge of the requested person, see … *India v Chawla* at paragraph 47.'

41. We respectfully agree. Other cases relied on by Mr Assange including *India v Ashley* [2014] EWHC 3505 (Admin) at paragraphs [42] and [43], do not provide support for the argument to the contrary. In *Romania v Iancu* [2021] EWHC 1107 (Admin) further information and a related assurance had been submitted outside a time limit and after the conclusion of the hearing. The District Judge refused to admit it when to do so would result in a further hearing and in further delay to proceedings. As Chamberlain J said at paragraph [22], "it is inherent in the concept of a time limit that failure to comply with it may have consequences". The present case is different.

42. In our view, a court hearing an extradition case, whether at first instance or on appeal, has the power to receive and consider assurances whenever they are offered by a requesting state. It is necessary to examine the reasons why the assurances have been offered at a late stage and to consider the practicability or otherwise of the requesting state having put them forward earlier. It is also necessary to consider whether the requesting state has delayed the offer of assurances for tactical reasons or has acted in bad faith: if it has, that may be a factor which affects the court's decision whether to receive the assurances. If, however, a court were to refuse to entertain an offer of assurances solely on the ground that the assurances had been offered at a late stage, the result might be a windfall to an alleged or convicted criminal, which would defeat the public interest in extradition. Moreover, as Mr Lewis QC pointed out on behalf of the USA, a refusal to

> accept the assurances in this case, on the ground that they had been offered too late, would be likely to lead only to delay and duplication of proceedings: if the appeal were dismissed on that basis, it would be open to the USA to make a fresh request for extradition and to put forward from the outset the assurances now offered in this appeal, subject, of course, to properly available abuse arguments."

42. In *Sula v Public Prosecutor of the Thessaloniki Court of Appeal* (Greece) [2022] EWHC 230 (Admin), [40]-[41] (William Davis LJ and Julian Knowles J), a case which concerned an assurance about prison conditions from Greece received after a deadline which this Court had set, it adopted the *Assange* approach and said the following:

> "40 … we have no doubt that the Court should receive and take into account the assurance from Greece, notwithstanding its lateness. It should be made clear that non-compliance with deadlines set by the courts of this country for the receipt of material from issuing judicial authorities is to be deprecated. Co-operation in extradition matters works both ways; just as our extradition partners rightly expect co-operation from courts here in the processing of their EAWs and extradition requests, so our courts should be able to rely upon requesting authorities to supply material in accordance with any deadlines which are set.
>
> 41. That said, there is no question of Greece having acted in bad faith or having delayed serving the assurance for tactical reasons. Moreover, little would be gained by refusing to accept the assurance, for essentially the reasons given by the Court in *Assange* [*United States of America v Assange* [2021] EWHC 3313 (Admin), a point which Mr Perry candidly accepted. Were we to do so, and the Appellant discharged, then it would be open to the Greek authorities to begin fresh proceedings for the serious drugs offence with which the Appellant is charged, with all of the delay and expense that would entail (and perhaps with the Appellant again remanded in custody, as he is presently). In our view that would not be in the interests of justice."

Discussion

43. I was of the opinion that it was in the interests of justice to admit the December assurance. That was for the following reasons.

44. Firstly, I accepted the submissions of Ms Hollos in [19]-[21] of her 7 February 2023 document;

> "19, The December 2022 Assurance is a re-issued assurance. It was not available previously as it had not been requested, and it has only been issued following the judgment in *Marinescu and Others*. Therefore, it is in the interests of justice to admit the assurance.

> 20. In substance, the December 2022 Assurance includes an assurance that the Appellant will be detained 'under decent conditions which ensure the respect for human dignity' during the entire period of detention. A significant amount of detail is provided in respect of the 21-day quarantine and observation period at Rahova Prison.
>
> 21. The December 2022 Assurance now puts the Appellant on par with the combination of assurances approved in *Marinescu and others* and is a complete answer to the Article 3 ground of appeal."

45. Second, and in addition, if the assurance were not admitted, the Respondent would likely bring new extradition proceedings, of which the December 2022 assurance would form part, leading to delay and duplication (the point recognised in *Assange* and *Sula)*.

46. Third, whilst it was unfortunate that the application to adduce the December assurance was not made until February 2023, there is no question of Romania trying to seek a tactical advantage by waiting until February to adduce it.

47. Fourth, there is no prejudice to the Appellant in admitting the assurance.

48. Following our decision to admit the assurance, it follows the appeal must be dismissed.

Lady Justice Nicola Davies

49. I agree.