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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BEFORE A DIVISIONAL COURT

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IN THE MATTER OF AN APPLICATION UNDER THE EXTRADITION ACT 2003

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Between:

VASILE MUNTEAN

(Respondent/Requested Person)

and

TRIBUNALUL ARAD ROMANIA

(Appellant/Requesting State)

and

ALEXANDRU-RARES ZAHARIA

(Appellant/Requested Person)

and

BRASOV DISTRICT COURT ROMANIA

(Respondent/Requesting State)

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Before: Stephens LJ, Treacy LJ and Sir Richard McLaughlin

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TREACY LJ (delivering the judgment of the court)

Introduction

[1] Mr Muntean and Mr Zaharia are Romanian nationals subject to European Arrest Warrants ("EAWs") issued by Romania, the Requesting State ("RS").

[2] The EAW relating to Mr Muntean (Requested Person, "RP") is a conviction warrant, the RP having been convicted of the offence of people trafficking. The offences occurred between around 2003 to 2009. The RP was convicted on

18 December 2009 and the related appeals against conviction, heard on 2 November 2010 and 9 June 2011 were dismissed.

[3] The EAW relating to Mr Zaharia (Requested Person, "RP") is a conviction warrant, the RP having been convicted of an offence which would be categorised in this jurisdiction as aggravated burglary and theft. The offence occurred on 28 September 2016. The RP was convicted in absentia on 31 May 2018 and the conviction was finalised on 31 July 2018 by lack of appeal.

[4] The central issue raised in respect of both of these appeals is whether the assurances provided by the Romanian authorities as to the conditions in which the Requested Persons will be held if extradited are of sufficient quality and reliability to dispel the known risk of violations of article 3 ECHR arising principally from the prison conditions in that country.

Agreed Issues for determination

[5] The following is the agreed list of issues to be determined relating to Mr Muntean:

(a) Whether there is evidence of a real risk of inhuman or degrading treatment in the requesting state's (RS) prisons.

(b) Are the assurances provided by the RS (i) sufficient and (ii) specific so there can be no doubt that the assurances in this case demonstrate that there are no substantial grounds for believing there is a real risk of the requested person's (RP) article 3 rights being breached.

(c) Are the assurances of sufficient strength and scope so that there can be no doubt that the assurances in this case demonstrate that there are no substantial grounds for believing there is a real risk of the RP's article 3 rights being breached.

(d) Are there substantial grounds for showing that, in light of the COVID-19 pandemic, RP could suffer a breach of his article 3 rights if extradited. And if so, are the assurances provided by the RS in respect of the COVID-19 pandemic, sufficient (objective, reliable, specific with properly updated information) to satisfy the court that there are no issues arising which could give rise to an article 3 complaint.

(e) Is there cogent evidence to refute the presumption that an assurance given by a responsible minister or responsible senior official of a Council of Europe or EU state will be complied with.

(f) Is there an absence of an effective remedy in breach of article 13 ECHR.

(g) If the court considers that there is an absence of an effective remedy, does this compound the real risk of a breach of the RP's article 3 rights.

[6] The following is the agreed list of issues to be determined relating to Mr Zaharia:

(a) Without reference to any assurances, is there evidence that the requested person (RP) is at a real risk of inhuman or degrading treatment if returned to the RS?

(b) If so, having regard to the assurances now given by the RS to the court, are those assurances sufficient and specific to satisfy the court that there are, in fact, no substantial grounds for believing there is a real risk of the RP's article 3 rights being breached having regard to:

(i) The potential risk of being imprisoned in conditions that are inhuman and degrading.

(ii) The potential risk of being imprisoned in conditions that expose the RP to an unacceptably heightened risk of contracting COVID-19.

(c) Is it relevant to the court's adjudication of the RP's appeal that assurances have been given by the RS on other occasions outside of this court process? Can requests for assurances by other bodies and assurances given be relied upon?

(d) Is it relevant to the Court's adjudication of the RP's appeal to be satisfied that the RP has an effective remedy available to him in the jurisdiction of the RS in the event that he is subject to an article 3 breach if returned?

(e) If so, does the RS provide currently an effective remedy (article 13 ECHR)?

(f) If not, what is the consequence?

Factual Background

Mr Muntean (RP)

[7] The RP is sought by the requesting state ("RS") to serve a sentence of 6 years imprisonment less any period in custody in Northern Ireland ("NI") relating to the conviction noted in paragraph 2 above. The RP was arrested in Belfast on 15 March 2019 and has been detained in custody since that date. The RP contests his extradition based on concerns about prison conditions in the RS.

[8] On 4 July 2019 HHJ Smyth found that the assurances provided by the RS were not sufficient to dispel the real risk of a breach of the RP's article 3 ECHR rights and ordered that the RP be discharged.

[9] The RS appeals said decision. The agreed issues to be decided have been distilled to those noted at paragraph 5 above.

Mr Zaharia (RP)

[10] The RP is sought by the RS to serve a sentence of 3 years and 547 days (or 4 years and 182 days). The RP believes the 547 days relates to a suspended sentence activated by the conviction noted in paragraph 3 above. He appeals against the decision of the Learned Recorder to order his extradition.

[11] HHJ McFarland upheld the EAW and ordered the extradition of the RP on the basis that extradition to the RS:

(a) Does not infringe the RP's article 8 ECHR rights for reasons including the length of time spent in NI and the fact that the RP's wife and children reside in the RS.

(b) Does not risk infringement of article 3 ECHR in light of the detailed assurances relating specifically to the RP given by the RS including an assurances of individual space of at least 3 square metres and medical assistance. The judge found there was no recent evidence to suggest the RS would not comply with the assurances.

[12] The RP appeals said decision. The agreed issues to be decided have been distilled to those noted at paragraph 6 above.

Relevant legislation

[13] The following sections of the Extradition Act 2003 are relevant (sections 21 and 26 to 29):

> **"Person unlawfully at large: human rights**
>
> 21.-(1) If the judge is required to proceed under this section (by virtue of section 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
>
> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.

(4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the category 1 territory.

(5) If the person is remanded in custody, the appropriate judge may later grant bail.

Appeal against extradition order

26.-(1) If the appropriate judge orders a person's extradition under this Part, the person may appeal to the High Court against the order.

(2) But subsection (1) does not apply if the order is made under section 46 or 48.

(3) An appeal under this section—

(a) may be brought on a question of law or fact, but

(b) lies only with the leave of the High Court.

(4) Notice of application for leave to appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order is made.

(5) But where a person gives notice of application for leave to appeal after the end of the permitted period, the High Court must not for that reason refuse to entertain the application if the person did everything reasonably possible to ensure that the notice was given as soon as it could be given.

Court's powers on appeal under section 26

27.-(1) On an appeal under section 26 the High Court may—

(a) allow the appeal;

(b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) order the person's discharge;

(b) quash the order for his extradition.

Appeal against discharge at extradition hearing

28.-(1) If the judge orders a person's discharge at the extradition hearing the authority which issued the Part 1 warrant may appeal to the High Court against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 41.

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

(4) An appeal under this section—

(a) may be brought on a question of law or fact, but

(b) lies only with the leave of the High Court.

(5) Notice of application for leave to appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order for the person's discharge is made.

Court's powers on appeal under section 28

29.-(1) On an appeal under section 28 the High Court may—

(a) allow the appeal;

(b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the judge ought to have decided the relevant question differently;

(b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the judge deciding the relevant question differently;

(c) if he had decided the question in that way, he would not have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) quash the order discharging the person;

(b) remit the case to the judge;

(c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.

(6) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.

(7) If the court allows the appeal it must remand the person in custody or on bail.

(8) If the court remands the person in custody it may later grant bail."

[14] Article 3 ECHR is relevant and provides:

"Article 3 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

[15] Article 13 ECHR is relevant and provides:

"Article 13 Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

[16] Section 1(1) of the Human Rights Act 1998 is relevant and provides:

"1.-(1) In this Act "the Convention rights" means the rights and fundamental freedoms set out in—

(a) Articles 2 to 12 and 14 of the Convention,

(b) Articles 1 to 3 of the First Protocol, and

(c) Article 1 of the Thirteenth Protocol, as read with articles 16 to 18 of the Convention."

European Caselaw: *Aranyosi* and *Rezmives* decisions

[17] In *Aranyosi & another v Generalstaatsanwaltschaft Bremen* (C-404/15) (C-659/15 PPU), decision of the Grand Chamber of the CJEU made on 5 April 2016, the court stated:

> (a) The EAW system is based on the principle of mutual recognition and mutual confidence between member states that the national legal systems are capable of providing equivalent and effective protection of fundamental rights recognised at EU level, particularly in the Charter (paragraph 77).
>
> (b) The prohibition of inhuman and degrading treatment is absolute and guaranteed by Article 4 of the Charter and article 3 ECHR (paragraphs 85 and 86).
>
> (c) Where a judicial authority is in possession of evidence of a real risk of an article 3 breach as a consequence of extradition, the judicial authority must assess the risk. The consequence of the execution of the EAW must not be that an individual suffers inhuman or degrading treatment (paragraph 88).
>
> (d) In assessing the risk the judicial authority may rely on "information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing Member State and that demonstrates that there are deficiencies." Such information includes judgments from the ECtHR and Member State courts and reports form the Council of Europe (paragraph 89).
>
> (e) 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" (paragraph 91).

> (f) If a finding as per (e) above is made by an executing judicial authority, "the executing judicial authority must request that supplementary information be provided by the issuing judicial authority." The executing judicial authority must postpone any decision relating to extradition "until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end" (paragraph 104).

[18] In *Rezmives & Ors v Romania* [2017] ECHR 378 the ECtHR found the conditions in Romanian prisons routinely breached article 3 ECHR and the problems were systemic. The problems included overcrowding, poor hygiene, inadequate natural and artificial light, poor sanitary conditions and presence of vermin. The ECtHR adopted a pilot judgment procedure in order to:

(a) Clearly identify structural problems underlying the breaches.

(b) Indicate measures to be applied by the RS to remedy them.

(c) Facilitate the effective implementation of the judgment.

Pending the success of the Romanian government's strategy to improve detention conditions, specific assurances would be necessary.

Submissions relating to Mr Muntean (RP)

Submissions made on behalf of Romania (requesting state, "RS")

[19] It is not disputed that RS has problems with its prisons and Article 3 breaches have occurred (*Rezmives*). The RS submits, however, that in these proceedings the court must assess if it should accept the assurances given by RS.

[20] The following submissions are made in relation to the RS's assurances in reply to the *Aranyosi* letter (responses dated 5 December 2018 and 5 April 2019):

(a) The assurance is up to date and specific to the RP.

(b) The fulfilment of the assurances is capable of being verified.

(c) There is assurance of space of 3 square metres per detainee (satisfies the minimum requirement as per *Mursic v Croatia* 2015 ECHR 290),

(d) There are assurances relating to sanitary facilities and light.

(e) The most likely detention facility is specified ("likely" as opposed to exact specification is satisfactory as per *ML v Generalstaatsanwaltschaft Bremen* [2019] 1 WLR 1052 at paragraph 117).

(f) The prisons are monitored by the RS and other countries including the UK. On this basis it is submitted the assurance should be accepted.

(g) There is no suggestion the assurances are not in good faith.

(h) There is a sound basis for believing the assurances.

(i) There is a strong, but rebuttable, presumption that the RS is willing and able to fulfil its human rights obligations and honour the assurances (*Badre v Court of Florence* [2014] EWHC 614 at paragraph 41).

[21] A large number of cases are cited on behalf of RS including:

(a) *Dorbantu Case* C-128/18 Grand Chamber decision of 15 October 2019, paragraphs 36 and 45 to 85. The RS notes in particular that:

(i) A party to the ECHR cannot decline extradition on an EAW unless the court has carried out an up to date and detailed examination of the situation relating to detention conditions and risk (real and specific) of violation of the RP's Article 3 rights (paragraph 57 of *Dorbantu*).

(ii) When a state gives assurances that there will be no violation of Article 3 rights, that assurance must be relied upon at least in the absence of specific indications to the contrary that the assurance cannot be relied upon (paragraph 68 of *Dorbantu*).

(iii) The minimum individual space allocated to a detainee is 3 square metres, including furniture but excluding sanitary facilities (paragraph 85 of *Dorbantu*).

(iv) The assessment of conditions of detention must focus on the conditions in which the RP will be detained; which are defined in this case (paragraph 85 of *Dorbantu*).

(b) *Bartulis v Lithuania* [2019] EWCH 3504; The RS adopted a "precise action plan" to tackle prison issues including inter-prisoner violence. The RS made assurances specific to the RP. The RP was extradited on the grounds of the precise action plan and assurances.

(c) Criminal proceedings against LM C-216/18; the execution of an EAW constitutes the rule; refusal to extradite is intended to be the exception which must be interpreted strictly (paragraph 41).

[22] It is submitted that there is no evidence that the RP is subject to a real risk of violation of his article 3 rights because the assurances given by the RS will not be honoured. Further, there is no evidence that the assurances do not mitigate any such risk sufficiently.

[23] The case of *Scerbatchi v Romania* [2018] EWHC 3612 was cited by both the RS and RP. In this case the court found the assurance "satisfactory and appropriate in order to address the risk of ill-treatment arising from prison conditions and overcrowding in Romania"[1] and dismissed the appeal and upheld the extradition order.

[24] The RP submits that *Scerbatchi* could be distinguished from the index matter because the assurances given in that case were specific and bespoke.

[25] The RS submits, to the contrary, the assurances given in the index matter are arguably more specific and bespoke than those in *Scerbatchi*. It was submitted the assurances relating to the RP notes the most likely prison in which he will be held and details about the conditions in which the RP will be held. Such detail was absent in *Scerbatchi*.

[26] The court found in *Scerbatchi* that is was not necessary for the assurance to specify where the RP is to be held (paragraphs 40, 50 and 52). The RS submits that assurances similar to that in *Scerbatchi* have been accepted in the following cases resulting in the extradition of the relevant RP:

(a) *Romania v Varga* [2019] EWHC 890 (Admin), paragraphs 17 and 21.

(b) *Roberts v Romanian Judicial Authority* [2020] EWHC 199.

(c) *Gheorghe v Romania* [2020] EWHC 722 (admin).

[27] The RS submits that assurances noting the "most likely" place of detention satisfies the requirements of CJEU. In addition to the cases noted in paragraph 26 above, the CJEU stated at paragraph 117 of *ML v Generalstaatsanwaltschaft Bremen* [2019] 1 WLR 1052, "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."

[1] Scerbatchi v Romania [2018] EWHC 3612 paragraph 55

[28] The test to assess whether assurances are a sufficient guarantee of protection against ill treatment and so may be accepted is *Othman v UK* [2012] 55 EHRR. In accordance with *Othman* (at paragraph 189), the court will assess:

(a) The quality of the assurances.

(b) Whether in light of the RS' practices the assurances can be relied upon.

[29] In making the assessment noted above, *Othman* notes eleven (inexhaustive) factors to which the court will have regard. The RS rehearses and adopts the submissions made on behalf of Mr Zaharia relating to the application of the *Othman* factors and noted at paragraph 41 below.

[30] The RP raised a fresh issue relating to article 13 ECHR. It was argued that the RS provided no effective remedy in accordance with article 13 ECHR and the breach of said article compounds the real risk of a breach of article 3 ECHR. The RP submitted that the "mutual confidence" was undermined by The RS' removal of a redress mechanism.

[31] The RS noted the late stage at which the article 13 issue was raised and submitted:

(a) it is not permissible to raise a fresh issue save in special circumstances.

(b) Article 13 is not a Convention right (section 1(1) Human Rights Act 1998) therefore the RP cannot rely on it to support an argument that their Convention rights may be violated for lack of effective remedy.

(c) If the court considers article 13 is relevant, it would only become so if the court decided it could not rely on the assurances given by RS.

(d) An effective remedy in accordance with article 13 exists in Strasbourg.

Submissions made on behalf of Mr Muntean (requested person, "RP")

[32] The RP submits that the relevant general principles are:

(a) A RP cannot be extradited where there is a real risk of a violation of their Article 3 rights.

(b) Where there are substantial grounds for believing there is such a real risk, the court must request supplementary information (not just assurances) from the RS. Extradition cannot be ordered unless that information discounts the evidence of the risk.

(c) In assessing whether the information discounts the evidence of a risk of a breach of the RP's Article 3 rights the court has to assess:

(i) The quality of the assurances.

(ii) Whether in light of the RS' practices the assurances can be relied upon (*Othman v UK,* paragraph 189).

[33] The following submissions were made on behalf of the RP:

(a) The assurances given by the RS are general in nature despite the very focused questions posed by the court. Similar general assurances were rejected by the NI High Court in *Romania v Carpaci* [2018] NIQB 105. The assurances do not provide the information required pursuant to *Rezmives* (summary at paragraph 18 above).

(b) The problems in Romanian prisons are systemic and long standing as illustrated by *Rezmives and Banu & Ors v Romania* [2018] ECHR 745 (Appendix in *Banu* lists table of applications raising complaints under article 3). There is a multitude of problems in Romanian prisons including overcrowding.

(c) The prison where the RP will be detained is not specified. The reference to a "most likely" detention facility is insufficient to dispel the real risk of a breach of the RP's article 3 rights.

(d) There is no detail as to how the assurances will be met.

(e) The effective monitoring conditions are not addressed by the RS.

(f) In accordance with *Othman v UK* [2012] 55 EHRR the court must:

(i) Assess the quality of the assurances.

(ii) In light of the RS' practices, assess if those assurances can be relied upon (whether the assurances are specific or vague is relevant).

(g) In case of *Carpaci v Romania* [2018] NIQB 105 the NI court required an assurance that the RP would be kept at Arad prison. The assurance only stated that the RP would "most likely" serve his sentence in Arad penitentiary (paragraph 43). The NI court was not "satisfied that the risk of degrading or inhuman treatment can be discounted if the court were to extradite Mr Carpaci, and therefore the appeal is granted" (paragraph 50).

(h) The learned judge's reasoning for refusing to extradite the RP is unimpeachable.

(i) The assurances relating to the impact of COVID-19 on prisoners and prison conditions are vague and not specific to the RP.

(j) The RP would have liked the court to press the RS for more detailed assurances (as per the annex in *Choudhary v France* [2020] EWHC 1966 (admin)).

(k) The RS has repealed the compensatory mechanism established after the *Rezmives* pilot judgment thus prisoners in Romania are deprived of their right under Article 13 ECHR to an effective domestic compensatory remedy for any arguable claim that their Convention rights under article 3 have been violated.

(l) The above mentioned repeal:

(i) Compounds the real risk of a breach of the RP's article 3 rights.

(ii) Undermines mutual confidence.

[34] The RP notes the Report of Ministers Deputies relating to the *Rezmives* pilot judgment. It appears the report was published in early 2020 as it notes that overcrowding in prisons in Romania is still an issue as at 11 February 2020. The report states *inter alia*:

(a) The action plan published by Romanian authorities in December 2019 in relation to prison conditions was frozen in February 2020 when the government lost a no confidence vote.

(b) The situation in Romanian prisons has improved but sustained efforts are needed to fully execute the pilot judgment.

(c) On 12 February 2020, 6,625 applications concerning conditions of detention were pending before the European court.

[35] The RP submits in conclusion that the evidence indicates the court cannot discount the real risk that the RP would be detained in conditions that would violate article 3 ECHR in Romania. The assurances provided are vague and general and accordingly the RP should be discharged.

Submissions relating to Mr Zaharia (RP)

Submissions made on behalf of Romania (requesting state, "RS")

[36] The RS cites *Rezmives* (outlined at paragraph 18 above) and submits that the pilot judgment does not of itself create a blanket article 3 defence to all RPs being extradited to Romania. Rather the court must consider the allegations made, the

assurances sought from the RS and whether those assurances are specific and sufficient to:

(a) Satisfy the court that the RP's article 3 rights will not be breached; or

(b) If the court is not so satisfied, is there strong cogent evidence the assurance will not be honoured.

[37] The RS' response of 15 April 2019 to the *Aranyosi* letter states that the RP will initially be held at Rahova Penitentiary for the quarantine period of 21 days in a room with space of at least 3 square metres. The RP will "probably" serve his sentence in Margineni Penitentiary (closed regime). The RP will have natural and artificial lighting, adequate ventilation and access to cold drinking water. After serving one fifth of his sentence the RP will be assessed and may move to a semi-open regime which would "most probably" be Codlea Penitentiary. Details relating to detention conditions including minimum space (3 square metres), light, sanitary facilities and exercise opportunities are provided.

[38] The RS submits the detail of the assurances given on 15 April 2019 (along with additional assurances dated 13 May 2020 and 25 July 2020 are akin to those in *Scerbatchi* and rehearsed in *Romania v Varga* [2019] EWHC 890 (Admin) (paragraphs 23 to 27 above are relevant and are echoed in the submissions made on behalf of the RS relating to Mr Zaharia). The prisons in which the RP is likely to held are stated and the conditions of detention are described in thorough and specific detail. The court considered similar assurances to be 'clear and specific'[2] and the RS invites this court to find likewise.

[39] In relation to the decision in *Carpaci*, the decision of the Recorder was made on 16 October 2015 and the assurances examined dated from between 2015 and 2017. It is submitted the case law relating to assurances has moved on since 2017 and the court is asked to consider the relevant recent case law and the assurances provided relating to where the RP will be/probably be held, for how long the nature and extent of facilities available in each penitentiary (see paragraphs 20(a), (c), (d), (e), 23 to 27 and 37 above).

[40] The RS further submits it is untrue to state that the assurances relating to the RP are similar to those in *Carpaci* for reasons including the assurance in *Carpaci* noted the semi-open regime would provide a minimum space of 2 square metres (*Carpaci*, paragraphs 45 and 48).

[41] The RS cites *Othman v UK* [2012] 55 EHRR 1 in relation to the test as to whether assurances from a RS may be relied upon. The RS notes the (inexhaustive) eleven factors to be taken into account in relation to assurances given to the court and responds to each as follows:

[2] Scerbatchi v Romania [2018] EWHC 3612, paragraph 50

(a) The terms of the assurances have been disclosed to the court.

(b) The assurances are specific.

(c) The National Administration of Penitentiaries gave the assurances.

(d) Local authorities can be expected to abide by the assurances.

(e) The assurances do not concern treatment which is illegal in the receiving state.

(f) The assurances have been given by a contracting state and a signatory to the Convention thus there is a sound objective basis for believing the assurances will be fulfilled.

(g) There has been no record of breaches of article 3 ECHR since 2015 (*Timis County Court (Romania) v Daniel Nicolae Rusu*) although the trustworthiness of that evidence relied upon is questionable.

(h) Fulfilment of the assurances is capable of being verified but it is not proposed that compliance with the assurances shall be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the RP's lawyers.

(i) There is an effective system of protection against torture in the RS. If the assurances are fulfilled, the RP will not be subject to inhuman treatment contrary to article 3 ECHR.

(j) The RP has not been previously ill-treated by the RS.

(k) The reliability of the assurances from Romania has been examined by the UK courts and England and Wales continue to extradite persons to Romania (*Scerbatchi, Varga, Gheorghe*). There is a strong, but rebuttable, presumption that the RS is both willing and able to fulfil its human rights obligations and any assurances given in support of those obligations (*Badre v Court of Florence* [2014] EWHC 614 at paragraph 41).

[42] The RS cited *Blaj & Ors v Romania* [2015] EWHC 1710 (Admin) at paragraphs 37 and 38 where the court referred to:

(a) An "*Othman* compliant" assurance dispelling any doubts as to whether that Romania would abide by its article 3 obligations.

(b) A presumption of compliance by other member states with EU law and in particular with fundamental rights.

The RS proposes that it follows that the court must have confidence that the assurances provided by the RS, specific to the RP, sufficiently demonstrate that the RP's rights will be respected and upheld and the assurance can be relied upon.

[43] The RS notes the RP applied to introduce the Barley report as 'fresh evidence' during the course of the proceedings. The Barley report is the first Due Process report dated 1 August 2018. The report stated that Romania was the worst violator of human rights within the EU. One statistic indicated that there were 104 breaches of article 3 in Romania and the vast majority of the breaches were in detention. The second Due Process report dated 18 October 2018 notes that Romania routinely does not stick to assurances thus cannot be trusted and prisons systematically violate human rights.

[44] The RS disputes the probative value of the Barley report and cites *Brazuks v Latvia* [2014] EWHC 1021 (Admin) at paragraph 42 where the court noted that contents of reports may assist in the formation of submissions but "The views of an expert are not relevant and probably not admissible since it is for the judge to decide on the evidence produced whether there is a real risk of any material ill-treatment." The court continued that if an 'expert' has "direct personal experience of the conditions in a particular country" that may entitle them to put forward expert opinions of relating to their experience but, in the absence of such personal experience, they are just sharing factual knowledge. The RS submits the Barley report is a generic report, not prepared by a recognised expert and the information therein is an amalgamation of information derived from news reports with scant detail given to substantiate the opinions.

[45] The RS submits the assurances given are detailed and specific to the RP. The RS respectfully rehearses and adopts the submissions made by the RS on behalf of Mr Zaharia as summarised at paragraphs 23 to 27 above (clear, precise, specific to RP, "most likely" sufficient etc). The RS concludes that the specific and comprehensive assurances are of sufficient strength and scope to provide a secure practical guarantee that the RP's article 3 rights will be upheld and the appeal should accordingly be dismissed.

Submissions made on behalf of Mr Zaharia (requested person, "RP")

[46] The RP echoes the submissions noted in paragraphs 32 and 33 above (excluding paragraph 32(h)). The RP submits that Romania was asked specific questions in the *Aranyosi* letter and did not provide specific assurances in reply. The RP respectfully submits that the NI court should have pressed the RS for more detailed assurances. The RP makes the following submissions:

(a) The RP will "probably" be held in Margineni Penitentiary and, after serving one fifth of his sentence, will be assessed and may move to a semi open regime which will "most probably" be Codlea Penitentiary. This assurance is

too vague and general and in effect gives no certainty as to where the RP will be imprisoned.

(b) The assurances give no detail on what measures have been introduced to reduce overcrowding and material conditions of detention despite specific questions being posed by the court.

(c) The index matter can be distinguished from cases such as *GS & Others v Hungary* [2016] EHRR 1 because in this case specific assurances were sought but general assurances were provided.

[47] Similar vague assurances were provided by the RS in *Carpaci* resulting in the court finding the assurances insufficient; the court should make a similar finding in this case.

[48] The RP cites *Choudhary v France* [2020] EWHC 1966 (admin) where the court found it was unable to make a determination in relation to a possible article 3 violation on the basis of the evidence presented to it; the evidence was unclear relating to matters including cell size. The court stated it "needs specific information before the extradition of the Appellant to France might be countenanced" and set out specific questions in the annex to the judgment. The RP submits that the questions in the annex to the *Choudhary* judgment provide the type of detail which the court in the present case must receive as a bare minimum.

[49] The RS notes the RP's reliance on *Choudhary* and submits that the position in the index case is markedly different from that in *Choudhary* and is a more developed stage not least because of the engagement of the RS with the court in these proceedings and the RS' wider engagement with the European court and committees. The RS repeats the submissions noted at paragraphs 25 and 36 above (that the assurances provided in this case are clear and bespoke).

[50] The RP submits the Human Rights report by the US State Department published in 2018 relating to Romania notes the problems of overcrowding, inadequate hygiene and inter-prisoner violence in Romanian prisons. Further, the Council of Europe report dated 19 March 2019 referred to the problems in Romanian prisons including ill treatment of prisoners, a climate of fear, inadequate health care. The RP places reliance on the Barley report referred to at paragraph 43 above to demonstrate Romania's continuing problems in places of detention.

[51] The RP submits that he 'slipped through the net' and the extradition was ordered because, perhaps, the lower court did not have enough material before it to undermine the suggestion that the assurances should be accepted at face value.

[52] The RP submits the assurances provided are unreliable because:

(a) Romanian authorities have recently provided assurances in the context of extradition from the UK which were subsequently breached. Such breaches were not disclosed candidly by the RS but discovered by lawyers who obtained statements from extraditees (*Zagrean & Ors v Romania* [2016] EWHC 2786).

(b) Romanian officials have admitted to lying about prison conditions to senior judicial figures (article of October 2016 entitled "Romania's Minister of Justice admits lying to the European Court of Human Rights").

(c) The available evidence tends to show that prison conditions in Romania have not improved. It is noteworthy that there is no evidence in rebuttal of the Barley report.

(d) The assurances are general and not specific (paragraphs 42 and 43 above are relevant).

[53] The RP submits in conclusion that the RS has failed to maintain a ECHR compliant prison system therefore is must be subject to a higher degree of scrutiny. Importantly, if the court asks a RS a question about a particular institution, the RS needs to answer such specific questions. Adequate assurances have not been provided the RP should be discharged from these proceedings in accordance with the Extradition Act 2003 and *Aranyosi*.

Discussion

[54] The key issues we must decide are summarised at paras[5] & [6] above. In the case of both RPs the starting point is the same:

> "Is there a real risk of inhuman or degrading treatment of inmates in the RS's prisons?"

[55] In *Resmives* the ECHR found that there was extensive evidence of such a risk and that conditions in Romanian jails routinely breached article 3 standards because of overcrowding, inadequate access to light and ventilation and various other problems. It adopted a pilot judgment procedure designed to help the member state identify the systemic causes of these breaches and to develop remedial measures to address these problems. In light of the material before the court we consider that this question must be answered in the affirmative.

[56] Evidence of the existence of such a risk in a given MS does not, of itself, justify a refusal to execute a European Arrest Warrant issued by that State. Rather, it creates an obligation on the Executing State to seek additional information about the conditions in which the RPs would be held if extradited. When that information is received it must be assessed by the Executing State to see whether it allows that state

to discount the known risk of article 3 violations occurring, should it decide to send the RPs back.

The Assurance Given

Mr Zaharia

[57] In this man's case the *Aranyosi* letter seeking more information about the proposed conditions of his detention in Romania was issued on 4 April 2019. The relevant part of the letter is reproduced below:

> "**REQUEST FOR INFORMATION**
>
> 1. Please confirm that Romania has introduced measures to reduce overcrowding and improve the material conditions of detention:
>
> a. What measurs have been introduced in that regard;
>
> b. Please provide specific information on what monitoring measures will be put in place to ensure that any action plan is effective.
>
> 2. Please confirm that Mr Zaharia will not be imprisoned in the required minimum personal space of less than 3sq.m whether he is held in detention in a closed, semi-closed or open regime.
>
> 3. Please give details as to the
>
> a. precise location where Mr Zaharia will be imprisoned should he be extradited to Romania (both in terms of remand/preventative detention centre)
>
> b. The precise conditions in which he will be detained; and
>
> 4. What assurances can you give that Mr Zaharia's treatment and imprisonment will be complaint with Article 3 of the Eruopean Convention of Human Rights (ECHR)
>
> a. Where possible please include reference to additional assurances as to regarding furniture,

light, ventilation, heating, access to running water, sanitary conditions and food.

5. Please confirm that if Mr Zaharia is transferred to other neighbouring remand and detention centres, similar detention conditions (as per the assurances) shall be provided to him."

[58] In its response dated 15 April 2019, the RS said that if extradited:

> "Mr Saharia would initially be held at Rahova Penitentiary for the quarantine period of 21 days in a simple room with a minimum of 3sq.m space."

After quarantine, the National Administration of Penitentiaries, acting through a specialised commission, would assess which prison regime should apply to him and where he would serve his sentence. The response lists the criteria applied by the Commission which include the age and health of the prisoner, his positive and negative behaviours including during previous detention and the closeness of the designated prison to his domicile in Romania.

[59] In Mr Zaharia's case it was considered likely that he would initially serve his sentence in Marginemi Penitentiary though this cannot be guaranteed as it is a decision for the assessing commission.

[60] The response then describes the detention rooms in the likely destination prison which:

> "have natural and artificial lighting, adequate ventilation, furniture for serving meals, own bathrooms with permanent access to cold drinking water."

[61] The response also specifies that:

> "… detainees have access to walking yards (daily), club, church, spaces for exercising their rights (telephone conversations, petition, visits, personal visits, medical practices, information and electronic documentation points, etc)"

[62] After serving one fifth of his sentence the prisoner is reevaluated and the response notes:

> "The evolution of the punishment execution regime cannot be foreseen because it mainly depends on the behaviour shown during the punishment execution. If

> the detainee is distributed to serve the punishment in the semi-open regime, he would most probably be transferred to Codlea Penitentiary."

[63] Conditions in this likely transfer site have shared rooms for two prisoners. The conditions are described as follows:

> "The detention rooms are made of two spaces: one space for rest and one for hygenic and sanitary activities. The equipment of rooms includes the individual bed and bedding necessary for each detainee, two tables, five chairs, TV holder.
>
> The accommodation rooms and the other rooms for convicted persons have large enough windows that allow the natural lighting and installations for adequate artificial lighting. The detention rooms have heat generators that ensure the optimum temperature during the winter.
>
> The space for hygiene and sanitary activities includes a shower, sink, WC and mirror. This space is separated from the rest of the room, being a distinct space, with access from the space for rest. The shower is separated from the rest of sanitary installations and the sink and WC are separated from each other by a partition wall.
>
> The detainees have access to walking yards (daily), clubs, sport ground, gym, church, classrooms and other spaces for exercising their rights."

[64] The "semi-open" regime that applies in the likely destination prison are described in detail. For example:

> "The doors of the rooms are open all day in the semi-open regime. The persons have access all day to walking yards with special places for smoking, based on the program approved by the unit management.
>
> Telephones for the use of detainees are installed on the hallways of detention sections and in walking yards, having available 10 daily telephone calls, with maximum cumulated duration of 60 minutes, electronic documentation and information points, where detainees can verify the prison situation (number of credits, educational activities attended, legal situation etc)."

[65] The response goes on to describe the regime for visits and for use of the prison shop, for access to work, training and recreational facilities. It explains that the prisoner might go the "open regime" and it provides similar detail in relation to the nature of that regime, also in Codlea Penitentiary.

[66] In relation to the appellant's concern that there is no certainty about where he would be imprisoned if extradited, the Romanian document states that if it happens that he is transferred to a unit other than that for which these guarantees are provided then:

> "the penitentiary administration shall take measures to comply with the guarantees provided exactly as they were formulated."

[67] Guarantees in relation to medical assistance are stated as follows:

> "The right to medical assistance, treatment and care of detainees is guaranteed, without discrimination concerning their legal status. The right to medical assistance includes the medical intervention, primary medical assistance, emergency medical assistance and specialised medical assistance. The right to care includes both health care and terminal care.
>
> Medical assistance, treatment and care in penitentiaries are provided by qualified staff, free of charge, according to law, upon request or whenever necessary."

Mr Muntean

[68] In relation to Mr Muntean, the *Aranyosi* letter was sent to the Romanian authorities on 14 November 2018. The specific questions asked were as follows:

> "(a) In which part of which institution or institutions will Vasile Muntean be detained for the duration of any sentence he will be required to serve in respect of either of the two European Arrest Warrants issued against him?
>
> (b) In which part of which institution or instituions will Vasile Muntean be detained for the duration of any period of remand in custody when awaiting trial and, if applicable, sentencing in respect of the accusation warrant?

(c) Will Vasile Muntean be accommodated in a cell which provided him with 3 square metres of space at all times throughout in compliance with Article 3 of the European Convention on Human Rights?

(d) What mechanisms exist, or will be provided to monitor the conditons in which Vasile Muntean is detained throughout his detentions?"

[69] The response dated 5 December 2018 follows a similar format to that in Mr Zaharia's case. It says that if extradited Mr Muntean would be held at Rahova Budapest Penitentiary for the quarantine period of 21 days. Thereafter, he would be assessed by the relevant commission which would assign him to serve his sentence in either a closed or semi-closed regime. In Mr Muntean's case, given his usual address in Romania, the authorities assert that he will "most likely serve the sentence in the Arod Penitentiary" if he is assigned to a closed regime.

[70] The response explains that in this facility prisoners are accommodated in communal rooms shared by four or a maximum of five prisoners. The accommodation comprises a room, lobby and sanitary facilities and measures 20.09sq.m. The provision of natural light, artificial light, ventilation and heating are described and it is confirmed that prisoners have uninterrupted access to drinking water.

[71] The broad contents of the regime in terms of provision for work, education/training and access to exercise are described in general terms and it is explained that the specific content of the regime that will apply to this appellant will depend on the assessment of the relevant assessing commission.

[72] After serving one fifth of his sentence the prisoner will be reassessed and may be moved to a semi-open or open regime depending on the view of the assessing body. If Mr Muntean is assessed as appropriate for such a regime "he will most likely be transferred to the Penitentiary of Timisoara."

[73] The detention conditions at this prison are described. It is confirmed that all prisoners are provided with bed and bedding, furniture for the storage of personal effects and access to a "sanitary group in which sink, shower and water closet are installed." There is permanent access to cold water.

[74] The features of the semi-open and open regimes within this prison are described including information about the visiting regimes and prisoners' access to a prison shop and other facilities such as phones and computers.

[75] The RS's document concludes with the following guarantee regarding the risk of overcrowding:

> "will provide a minimum individual space of 3 square meters for the whole sentence serving time, including pertaining bed and furniture."

The Effect of these Assurances

[76] In the case fo Mr Muntean the court in Northern Ireland considered that the assurances provided were insufficient to dispel the known risk of violations of article 3 and it discharged the EAW. The court dealing with Mr Zaharia considered the assurances for him sufficient to dispel the risks and it upheld the EAW. Both decisions have been appealed.

[77] It is agreed that to decide both cases this court must apply the test in *Othman v UK* [2012] 55 EHRR and assess:

(a) the quality of the assurances; and

(b) whether, in light of the RS's practices, the assurances can be relied upon.

(see paras (b), (c), (d) and (e) and para[6] (b) & (c) above)

The Quality of the Assurances

[78] The main question in relation to the quality of assurances is whether they are "sufficient and specific enough" to provide meaningful and reliable guarantees for RPs facing detention in prisons with known article 3 risks.

[79] The question of the sufficiency of the guarantees relates to whether they adequately cover the known risks that arise. In the case of Romania it is known that article 3 breaches arise most frequently from issues such as overcrowding, lack of ventilation and lack of access to fundamental needs for example, access to light, sanitary provision and access to drinking water.

[80] In the case of both RPs, the assurances given by the RS state the prisons at which they will be received initially for the 21 day quarantine period and then the prisons they will "most likely" be sent to following assessments by the relevant internal authorities in relation to which prison regime is suitable for them. Both RPs complain that the identification of prisons "most likely" to be used to accommodate them is too vague to be acceptable to the executing authorities.

[81] Upon reviewing the undertakings and assurances given by the RS, it is clear that separate considered responses have been made in relation to each RP and in each case the assurances address the common defects within the Romanian prison state which give rise to complaints of article 3 breaches eg overcrowding and lack of access to basic needs. In the case of both RPs, specific undertakings are given in relation to the amount of personal space that will be available to each RP and in both

cases the indicated allocation of personal space exceeds the 3 square metres minimum requirement which is necessary to achieve article 3 compliance. In both cases, specific assurances are given in relation to access to daylight, artificial light, ventilation, sanitary provisions and drinking water and these provide adequate mitigations against the risks of article 3 breaches based on deprivation of/lack of access to these basic provisions.

[82] In terms of exposure to Covid 19 risks, it is specified that each RP will be accommodated initially in quarantine cells for 21 days to mitigate the risks of Covid infections. Thereafter, the guarantee of personal space of 3 square metres further mitigates against Covid risks attributable to overcrowding. In the case of each RP the RS submitted further assurance dated 13 July 2020 in respect of Mr Muntean and 13 June 2020 in respect of Mr Zaharia listing the Covid 19 protection measures which are currently adopted at institutional level in relation to each prison where each of the RPs will be held. These safeguards include guarantees that:

(a) All recommendations of the medical staff were complied with and all measures imposed by the National Administration of Penitentiaries were also complied with.

(b) Disinfectants were allocated to detainees to be used within detention sections.

(c) Measures were ordered concerning the performance of activities in groups as small as possible thus reducing the risk of mass contamination.

(d) Protection masks were allocated to each detainee and used in all areas where they are involved in activities.

(e) All activities are conducted with the protection measures adopted, the instruments and spaces are frequently disinfected and additional protection equipment is used by selected persons.

[83] Having reviewed the detailed assurances given in respect of each RP both in the initial responses to the *Aranyosi* letters and in the supplementary letters of assurance issued on 13 May and 25 July respectively, we are satisfied that they are sufficient both in terms of the range of risks addressed and of the detail in realtion to the specific conditions of detention that are assured for each RP.

[84] This court notes that no organisation or institution can guarantee protection against the risk of Covid 19 infection. All any state or institution can do is to take relevant and reasonable precautions to mitigate the risks. We are satisfied that the assurances given by the RS in relation to each of the RPs concerns about Covid 19 are of a sufficient quality and specificity to allay those concerns to the maximum level that can reasonably be required .

In light of the practices of the RS, can the assurances be relied upon?

[85] This is the second aspect of the *Othman* test which must be applied. This limb of the test was considered in the *GS & Ors v Hungary* [2016] 4 WLR 33 in which the court said:

> "In all cases involving assurances the inquiry touches their 'practical application.' The question involves consideration of what is promised, by whom it is promised and whether, having regard to all the circumstances on the ground in the state in question, there is confidence that the promise will be honoured."

[86] It must be remembered that the two cases in this appeal relate to the actions of a sovereign European state which is a signatory of the ECHR and also a member of the EU. As such, it is entitled to the benefit of a strong, though rebuttable, presumption that it will abide by undertakings given to other Convention signatories.

[87] In assessing whether there is cogent evidence capable of rebutting this presumption, this court must look at the circumstances on the ground in Romania. The relevant "circumstances" in those cases are the general conditions within Romanian prisons and the current approach of the authorities in addressing those conditions. It is well recognised that Romania has serious problems of overcrowding and poor conditions in many parts of the prison estate and that this is a real concern. It is also true that a pilot judgment overseen by the Committee of Ministers is in place and that a live process of implementation of improvement of conditions is in hand.

[88] In the case of Mr Muntean, the trial judge accepted that Romania was acting in good faith:

> "Romania's authorities are doing their best to deal with serious deficiencies in the prison state, and the plans set out between 2018 and 2022 make it clear that there is good faith on their part. However, I am satisfied that until there is sufficient evidence of improvement, the terms of the assurance provided to date are not sufficient to dispel the real risk of a breach of the requested person's Article 3 rights"

[89] In applying the second limb of the *Othman* test it is important to look at evidence about the past conduct of the relevant RS in relation to the assurances it offers to executing states about the future treatment promised for persons at risk of extradition. In Muntean's case the trial judge, having reviewed this material, was not

satisfied about the reliability of assurances offered by the RS and she discharged the EAW.

[90] Two factors influenced the trial judge in relation to the reliability of the assurances in Muntean's case:

(i) The so-called "Barley Report"; and

(ii) The case of *Carpaci v Romania* [Unreported – 18 June 2018] in which a previous court rejected assurances by the RS on the ground that they did not adequately protect the RP from article 3 breaches.

[91] The "Barley Report"was a document produced by a commentator of unknown qualifications and standing which collated and reviewed pre-existing media coverage of artice 3 breaches in Romanian jails and some other materials. There was considerable debate as to whether the report contributed any genuinely "new evidence" to the court below and whether it was even admissible as an "expert" report given the unclear qualifications and expertise of the author. However, it was admitted in Mr Muntean's case and the court sought evidence in rebuttal of the contents from the RS. No such evidence was provided and this was one factor that caused the trial judge to dismiss its application for extradition.

[92] We consider that the material rehearsed in the Barley Report had already been taken into account within the extradition process in the case. This court and the court below have already accepted and recognised that there are systemic risks of article 3 breaches within the Romanian prison system. That is done under limb 1 of the *Othman* test. Limb 2 is about the acceptability or otherwise of the RS' assurances that any given RP will be protected from these known risks. The RS as a contracting state signatory of the Convention is entitled to a presumption that it will honour its assurances.

[93] In assessing the reliability of these assurances the trial judge was concerned that the RS had not rebutted material that simply rehearsed the known facts of the existence of risks of article 3 breaches in Romania. Such a rebuttal would have required a presentation of general progress made in improving conditions across the whole Romanian prison estate, even in prisons where there was no risk the relevant RP might ever be placed. A request for material on this scale is unnecessary in a case involving one EAW in relation to one specific RP.

[94] No such material was forthcoming and it has never been suggested in previous jurisprudence that a report of such breadth and scale is necessary in an extradition case. What was forthcoming was a detailed set of assurances from an appropriate authority about the specific conditions in which this RP would be held in the prisons he would "most likely" be committed to, plus a guarantee that should he be imprisoned elsewhere, these same guarantees would "follow him" to that new prison setting.

[95] In relation to the *Carpaci* case, it is, as the trial judge recognised, clearly distinguishable from the present case. In *Carpaci* the assurance was of a guaranteed 2 square metres of personal space which is less than the minimum space requirement for article 3 compliance. In the present case the guarantee is for a minimum of 3 square metres personal space which **is** article 3 compliant. The basis for the rejection of the *Carpaci* assurances does not exist in Mr Muntean's case.

[96] For the above reasons we are not satisfied that there is cogent evidence in Muntean's case which rebuts the presumption in favour of the reliability of the assurances given by Romania to him.

[97] The final "appeal issue" to be addressed by this court relates to the availability of an effective domestic remedy for article 3 breaches in Romania.

[98] Under the pilot judgment in *Rezmives*, Romania had trialled an internal mechanism for compensating any prisoners within its jurisdiction who were held in breach of article 3 via a system which effectively reduced the time spent in custody. Unfortunately, this internal mechanism is now paused and it is to be hoped that it, or another mechanism of similar effect, will be reintroduced as soon as possible.

What effect does the current absence of an internal remedy within Romania have on the reliability of its assurances in extradition cases?

[99] It is clear that the presence of an internal system of redress within Romania would be one more indicator of the good faith and reliability of that state party to extradition proceedings. From everyone's point of view, it would be better to have such a system than not to have one.

Does the fact that no such system currently exist mean that Romania's assurances in extradition cases cannot be accepted?

[100] This is a matter of individual evaluation in relation to the total content and context of each individual case. In the present two cases there are detailed and specific guarantees of adequacy in relation to core matters such as personal space and access to core amenities such as light, ventilation, drinking water etc, and these guarantees are stated to be applicable to each of these two RPs regardless of where they are detained.

[101] The good faith of Romania is evidenced by its continued participation in the pilot judgment process and its continued engagement as a Convention partner. On a similar question raised in the *GS* case the court stated:

> "The assurance is a solemn diplomatic undertaking by which the … authorities consider themselves bound."

[102] On the question of the effects of lack of domestic remedy in these types of cases the court said:

> "the absence of such a remedy does not call into question the reliability of the assurance. It is binding as between the two countries concerned."

Conclusion

[103] For all the above reasons we allow the appeal of the RS in the case of Muntean and reject the appeal of Mr Zaharia in his case.