Neutral Citation Number: [2018] EWHC 3612 (Admin)

Case No: CO/352/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2018

Before :

LORD JUSTICE BEAN

&

MR JUSTICE DOVE

- -

Between :

Viorel Scerbatchi	**Appellant**
- and -	
First District Court of Bucharest, Romania	**Respondent**

- -
- -

Edward Fitzgerald QC and Graeme Hall (instructed by **Lansbury Worthington**) for the **Appellant**
Mark Summers QC and Daniel Sternberg (instructed by **CPS**) for the **Respondent**

Hearing date: 22nd November 2018

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Approved Judgment

Mr Justice Dove:

Introduction

1. This is the judgment of the court to which we have both contributed.

2. This is an appeal against the decision of DJ Baraitser on the 18th January 2018 to order the extradition of the Appellant to Romania. The Appellant's extradition is applied for pursuant to a European Arrest Warrant ("EAW") issued by the Respondent on the 14th July 2017 and certified by the National Crime Agency on the 6th September 2017. The Appellant is sought in order to stand trial for an offence which it is alleged he committed on the 10th December 2013. The circumstances of the allegation are that, together with another person who was armed with a pistol and a silencer, he attempted to kidnap a person in an underground car park in Bucharest. The Appellant had with him a piece of fabric soaked in a chemical which might have been chloroform in order to render the injured party unconscious and assist in his kidnapping. According to the information from the Respondent accompanying the EAW there was an altercation following which the injured party was able to make good his escape. The incident was caught on CCTV, and the images from the CCTV showed a person whose features corresponded with the Appellant's features. It was established from records that shortly prior to the incident the Appellant had entered Romanian territory using a car which had also been used in committing crime. During the course of the investigation DNA evidence was also obtained with a view to examining whether there was a match with the Appellant.

3. In his evidence to the District Judge the Appellant denied any responsibility for the offence and contended that he was interviewed in Moldova in relation to this allegation but thereafter was told that he was free. He came to the UK on the 8th April 2015 in search of work and a better life for himself and his family. Before the District Judge his case was advanced on the basis that extradition should not be ordered as a result of Section 21A of the Extradition Act 2003, since extradition would be disproportionate and incompatible with his rights under Article 8 of the ECHR.

4. No issue was taken before the District Judge in relation to any suggested breach of Article 3 arising from the conditions in which he would be held either whilst awaiting trial, or if convicted, in order to serve his sentence. This was in consequence of the District Judge relying upon an assurance dated the 24th October 2017 from the Respondent which was summarised in paragraph 12 of her decision as follows:

> "The Judicial Authority provided an assurance dated 24th October 2017 relating to the prison conditions in which Mr Scerbatchi will be held. It confirmed the following:
>
> a. Mr Scerbatchi on surrender will be held in remand and preventative detention centre No. 3 within the 4th Police Precinct of the General Police Department of Bucharest City.
>
> b. Within this centre he will be accommodated in a room providing a minimal space of $3m_2$.

> c. Additional assurances are provided regarding furniture, light, ventilation, heating, access to running water, sanitary conditions and food.
>
> d. If Mr. Scerbatchi is transferred to neighbouring remand and detention centres, similar detention conditions shall be provided to him."

5. Permission to appeal the District Judge's order was granted by Sir Stephen Silber on 22nd June 2018. In the appeal the Appellant advances the contention that, notwithstanding the uncontested position before the District Judge, it would be in breach of his rights under Article 3 of the ECHR for him to be returned to Romania. While there was some debate prior to the hearing as to whether or not permission was granted solely in relation to the conditions of the Appellant's detention prior to trial, the case was argued before us on the basis of breaches of Article 3 both prior to trial and also, if convicted, when serving his sentence, and we have considered the case on that basis.

The Evidence in the Appeal

6. In the context of the preparation for this appeal there has been a torrent of exchanges in relation to assurances provided by the Respondent, and reaction to those assurances from the expert instructed on behalf of the Appellant, Dr Radu Chirita, who is an attorney in Romania dealing with human rights cases, in particular involving conditions in detention. We propose to focus in this judgment on the principle documentation arising in the case.

7. In response to the grounds of the appeal (which are dated 7th February 2018) the Respondent was written to by the CPS on 22nd February 2018 in respect of the Article 3 allegations. The Respondent replied on the 28th February 2018 and provided the following details in respect of where the Appellant would be held during the consideration of his case:

> "If the person in question is surrendered to the Romanian authorities on the Henri Coanda Airport from Bucharest, he will be placed in one of the remand and preventive arrest centres of the Ialomita County Police Inspectorate until the competent factors verify the legality and well-grounded nature of the preventative measure, in accordance with the provisions of art. 348, paragraph (2) of the Code of penal procedure, corroborated with the provisions of art. 207 paragraphs (2)-(4) of the Criminal Code, and then he shall be transferred immediately to a penitentiary unit from the penitentiary system subordinated to the National Administration of Penitentiaries, in accordance with the provisions of art. 260, paragraph (1)(a) of the Government Ordinance 157/2016.
>
> While being detained in this centre, the said person will be accommodated in a 9.2-square-meter detention room (which does not include the area of the appertaining restroom) designed to accommodate two occupants. Thus the said person

> will be placed in a room in which he will be granted an individual space of 4.6 square meters, which includes the bed and the appertaining pieces of furniture…
>
> Persons deprived of liberty are granted the right to take walks in the open, as required by the law, as well as psychological assistance activities. Every person placed in such centres is granted the appropriate exercise of his/her rights stipulated by Law No. 254/2013.
>
> If during the period while the preventive measure is enforced various factors occur in this centre, which the administration thereof is unable to manage, measures will be taken for the said person to be transferred to other remand and preventive arrest centres located in the same region, so that the criminal proceedings should not be affected, centres where the person will be granted similar detention conditions"

8. A further letter was furnished by the National Administration of Penitentiaries on 26th April 2018. This letter clarified who would have responsibility for the Appellant at various stages of the criminal proceedings. In essence, whilst the proceedings are at a pre-indictment stage the Appellant will be held in the custody of the police authorities. Thereafter he will enter the system controlled by the National Administration of Penitentiaries. The letter provided the following information:

> "Having regard to your letter no. 34119/2018 concerning the request coming from the British Authorities about the detention conditions to which the Romanian national Scerbatchi Viorel (born 23.12.1979) will be subjected to, if he is extradited to Romania, we inform you as follows:
>
> Having regard to the fact that against the above mentioned person a remand custody warrant was issued, in case the person is surrendered to the Romanian authorities he shall remain in the custody of the police authorities until the criminal prosecution is finished and the person is indicted.
>
> The penitentiary system accommodates only:
>
> - Persons convicted based on a final court decision to a custodial measure;
>
> - Persons in detention awaiting trial, during the court proceedings;
>
> - Male/female persons against whom the education measure of confinement in an educational centre has been ordered;
>
> - Male/female persons against whom the educational measure of confinement in a detention centre has been ordered;

Against this background the National Administration of Penitentiaries cannot provide information on the ***prison*** *in which the person shall be accommodated and* ***the conditions of detention*** *he shall be subjected to.*

Having regard to the perspective of implementation of the measures included in the TIMETABLE FOR THE IMPLEMENTATION OF MEASURES 2018 – 2024 TO RESOLVE THE ISSUE OF PRISON OVERCROWDING AND CONDITIONS OF DETENTION ***the National Administration of Penitentiaries can safeguard right now a minimum individual space of 3 square meters for the entire duration of the penalty enforcement, including the bed and furniture belonging to it, however the safeguards can only be offered by our institution against the background of the operative situation existing at the time when they are offered.*** "

9. On the 10th September 2018 the CPS sent a further sequence of inquiries to the Respondent seeking further clarification in relation to the assurances. On the 9th October 2018 the Respondent's Ministry of Justice forwarded on two letters. The first letter was from the Police Inspectorate. It provided the following assurance in relation to the location where the Appellant would be held whilst under investigation by the police and the circumstances in which he will be accommodated:

> "Given the fact that repair and modernisation works are made in the remand and provisional arrest centres subordinated to the Bucharest General Police Directorate, we are keeping our statements made after the request for additional information, in the letter no. 1.472.172 dated 28th February 2018, according to which Mr Scerbatchi Viorel will be held only in the custody of the Ialomita County Police Inspectorate, being applied the detention conditions described in our previous correspondence.
>
> We are mentioning that only one remand and provisional arrest centre is operating under the subordination of the Ialomita County Police Inspectorate, a fact which is also underlined in the reference document.
>
> According to Article 233 (1) and Article 236 (4) of the Penal Procedure Code, in the course of the criminal prosecution, the length of the defendant's provisional arrest cannot exceed 30 days, with the possibility of a successive extension up to 180 days which may be ordered by the justice of peace from the court which has the competence to judge the case on the merits or from the court which has a similar hierarchic competence in the circumscription area of the detention facility, the place where the offence was found to be committed or the headquarters of the Prosecutor's Office where the prosecutor making the proposal is employed.

We are also mentioning that during criminal proceedings, the court of law **may replace the measure of provisional arrest**, and thus we cannot estimate the possible length of the time executed in the remand and provisional arrest centre subordinated to the Ialomita County Police Inspectorate or, insofar as he will be sent to trial while being held in provisional arrest, we cannot estimate for how long he will be in this position.

Furthermore, the organisation of the task pertaining to the extradition and escort of Mr Scerbatchi Viorel in Romania is carried out only by the International Police Cooperation Centre of the Romanian General Police Inspectorate, so that he will arrive at Henri Coanda Airport Bucharest, other airports in the country being excluded in this matter.

Regarding sports and recreational activities please be advised that according to the provisions of Law no. 254/2013 and Order of Minister of Internal Affairs no. 14/2018, each prisoner may take outdoor walks and is provided access to the library, on a daily basis **for at least one hour.**

Thus, Mr Scerbatchi Viorel will be able to carry out sports activities in the two courtyards of the remand and provisional arrest centre, which are equipped with ***metal wall-bars and magnetic bicycles,*** as well as recreational activities in the library equipped with a TV set and books."

10. The second letter was dated 8th October 2018 from the Ministry of Justice addressing the circumstances in which the Appellant will be held during his trial and, if convicted, the serving of any custodial sentence which might be imposed. In response to the questions raised by the CPS as to the space available in any prison in which the Appellant served a custodial sentence, details as to whether or not the initial quarantine assessment period was included in the assurance and whether any toilet and washing facilities were included within the assessment of available space (questions 12a-12e) a letter from the Respondent provided as follows:

"*Regarding section 12 a:*

The National Administration of Penitentiaries guarantees that it shall ensure a minimum individual space of 3 square meters **while serving the entire sentence,** including the related bed and furniture.

Regarding section 12 b:

The quarantine and observation period is specific to the activities of initial assessment and intervention, performing medical examinations and ordering information and documentation measures. **This period is an integral part of the period during which the custodial sentence is served.**

Regarding section 12 c:

When the minimum individual space is calculated, the sanitary annexes or spaces intended for the prisoners' bathing are not considered.

Regarding section 12 d and 12 e:

The National Administration of Penitentiaries maintains its position regarding the assurances provided to the abovementioned Scerbatchi Viorel, **for granting a minimum individual space of 3 square meters,** including the related bed and furniture, **regardless of the regime for serving a custodial sentence.**

*Given that **there is no information on the conviction of the abovementioned to serve a custodial sentence and the length of the sentence,** the National Administration of Penitentiaries cannot determine the regime for serving the custodial sentence to which he shall be assigned and the prison facility in which he shall be incarcerated.* "

11. On the 18th October 2018 in response to this further correspondence and the assurances it contained the CPS wrote again in particular seeking clarification and confirmation that the Appellant would be held in the Ialomita County Remand and Provisional Arrest Centre. Further information was also sought in relation to whether the assurances as to the minimum amount of available personal space would apply throughout the entirety of any detention of the Appellant. A police commissioner responded in relation to the Ialomita County Remand and Provisional Arrest Centre in the following terms on the 24th October 2018:

> "If the person concerned shall be surrendered to the Romanian authorities, he shall only be held in the custody of the **Remand and Provisional Arrest centre subordinated to the Ialomita County Police Inspectorate,** where he shall be applied the detention conditions presented in our previous correspondence, regardless of the factors which may intervene throughout the execution of this precautionary measure.
>
> While being held in the custody of this Centre, the person concerned shall be accommodated in a 9.2 square meter room (*which does not include the floor surface of the sanitary facility),* allotted for two persons. Thus, the person concerned shall be detained in one room providing 4.6 square meters of personal space **on a permanent basis,** which includes the bed and related furniture. Detention rooms are provided with a personal bed for each individual, as well as mattresses and necessary bedding and are endowed with furniture for the storage of personal effects and serving meals. The room is provided with natural ventilation and light in a proper manner; and depending on the weather conditions, the temperature is

kept at an optimum level by air-conditioners and radiators. The persons held in custody have permanent access to water and sanitary items to satisfy their physiological needs, as each detention room is provided with a sanitary facility (*consisting of a sink, water closet and shower)* separated from the rest of the room to ensure privacy in respect of personal hygiene."

12. The National Prison Administration responded to the request for clarification in respect of minimum available personal space in the facilities for which they have responsibility in the following terms in their response dated 25th October 2018:

> "*With reference to paragraph 2a:*
>
> Once the suspect has been surrendered to a prison unit, **he will be provided a minimum personal space of 3 square meters**, according to the undertakings presented in letters nos. 35199/DSDRP/2018 and 58993/DSDRP/2018.
>
> The National Prison Administration maintains its firm position regarding the observance of these undertakings, regardless of the execution regime or the prison unit in which he will be incarcerated."

13. After the CPS requests had been issued on 18th October 2018, but prior to the receipt of the further clarifications and assurances in response to them, the Appellant's expert Dr Chirita had furnished a report in relation to the circumstances in which the Appellant would be held at each of the stages of the criminal proceedings. Dr Chirita observed that in relation to the pre-indictment or prosecution stage it was very likely that the Appellant would be held in a custody centre under the supervision of the Ministry of Internal Affairs (through the Bucharest Police Department) in one of the several custody facilities in Bucharest. He expressed this view because he considered that at the investigation stage it would be most administratively convenient for the Appellant to be held in one of the centres in Bucharest so as to facilitate further questioning, confrontation with witnesses or any other investigations necessary to conclude whether or not the matter should proceed to trial. Furthermore, Dr Chirita pointed out in his report that in the event of overcrowding the redistribution of detained persons to other detention centres could be carried out under Romanian law without reference to the Judge who had determined the location of detention initially.

14. Against the background of his conclusion that it was overwhelmingly likely that the Appellant will be held in a remand facility in Bucharest, Dr Chirita provided details of the remand centres in Bucharest, concluding that each of them was unable to offer Article 3 compliant conditions for the detention of the Appellant. In respect of the identified Ialomita County Remand and Provisional Arrest Centre, Dr Chirita pointed out that from 24th July 2012 – 1st November 2017 that custody centre had been concluded to have improper detention conditions. However, he went on to record that at a visit of the Ombudsman on 9th July 2018 there was no problem with overcrowding at the facility. The Ombudsman went on to conclude, that with few exceptions rooms had appropriate conditions for detention, prisoners had access to relevant legislation, their rights obligations, and legal assistance, but there was limited access to mass media since the rooms were not equipped with TVs and there were no

newspapers or magazines for the detainees to read. Concerns were also recorded in relation to access to psychological assistance. Dr Chirita made the following observation in relation to prison conditions at Ialomita County Remand and Provisional Arrest Centre:

> "63. Regarding the last condition, that the prison conditions are generally appropriate, according to Order no. 140/2017, this condition would only be met by the Ialomita Detention Centre (since 1st of November 2017, as I have mentioned above – para. 44) as all of the centres under the supervision of the Bucharest General Police Department have improper conditions, as I have shown in the previous point. However, even though the Internal Affairs Minister does not recognise the existence of improper detention conditions in the Ialomita CPPA, the Ombudsman has confirmed several problems, as I have previously stated."

15. Against the background of this conclusion Dr Chirita went on to express the following views as to the realism and reliability of an assurance that the Appellant would be taken to and at all times thereafter held in the pre-indictment stage at Ialomita County Remand and Provisional Arrest Centre:

> "69. Given the fact that, if sent to Romania, the RP will first be taken in police custody, I admit that it is possible for him to first be taken to Ialomita Custody Centre as the General Police Inspectorate has stated. However, after the confirmation procedure, his place of custody will no longer be under the Government's authority but under the judicial body's authority. The Judge is the one who decides the detention place according to the needs of the prosecution and the judge cannot be obliged to respect the Government's assurances as he is independent from the executive body.
>
> 70. Moreover, it should be noted that the warrant confirmation procedure does not even allow for the participation of a representative of the executive authority. The sole participants are the judge, the prosecutor (both part of the judicial authority and independent from the executive) and the defendant and his attorney. This even means that requests sent by an executive authority in this procedure cannot be taken into account as it is not a party. Therefore, the authority that gave the assurances will have no part or say in the procedure.
>
> 72. However, when a person is requested for the execution of a preventive arrest warrant, the executive authority cannot base an assurance regarding a specific detention location on any legal provision. This is due to the fact that, until a final decision is taken in the case, it is the judicial authority who decides where the person will be held in order to ensure that the judicial procedure will not be affected.

73. Even if we would presume that a judge will decide that the RP will be incarcerated in Ialomita Custody Centre, the reality is that the RP would be detained most of the time in the Bucharest Police Custody Centres.

74. Ialomita County custody centre is located in the town of Slobozia, which is approximately 125 kilometres away from Bucharest. The prosecutor's office, as well as the courts that have authority to decide on all aspects of the RP's criminal trial are all located in Bucharest.

75. It is highly unusual for a person to be detained in a different city than the one in which the prosecution is taking place before being sent to trial. This is due to the fact that, in the prosecution stage, before being sent to trial, the person needs to be as accessible to the authorities as possible for a good administration of justice. For example, a person placed in preventive arrest will need to be presented to a judge at least twice in a period of 30 days in the procedures of extension of the arrest measure (first instance and appeal). Also, the prosecution will probably need the presence of the person at its office for different acts that legally require the presence of the accused, in this stage of the proceedings like: hearing the accused, confrontations with witnesses or other suspects, computer searches or unsealing of documents.

76. It is for this reason that I strongly believe that, even if the RP would be 'based' at Ialomita Custody Centre, he will effectively execute most of the arrest measure in a detention unit in Bucharest until his case is sent to trial."

16. Turning to the period in which the Appellant would be detained during the trial phase of his case, Dr Chirita provided the following information in relation to the facilities at the Rahova Penitentiary where he considered the Appellant was likely to be held:

"*Regarding Rahova Penitentiary*

108. According to ANP official data (Appendix no.11), on 3rd July 2018, the occupancy level of the Rahova penitentiary was 121,23% (all occupancy percentage refer to a surface of 4 square meters/inmate and refer to the entire unit). There were 1325 prisoners held there, while the capacity of the unit is 1093 persons at 4sqm/prisoner. I wish to underline the fact that 4sqm/prisoner is the legal requirement in Romania for detained persons according to article 551 of Law no. 254/2013, irrespective of the detention regime applicable, and it is for this reason that all occupancy percentages are calculated at this rate in official statistics.

109. This means that the capacity of the unit at 3sqm/ prisoner is 1457 persons. Therefore, on July 3rd, the occupancy

percentage at 3sqm/prisoner was approximately 90%. However, I believe that this does not mean that the assurances given by the Romanian authorities that the RP will be given 3sqm of personal space will be fulfilled…

114. According to the most recent occupancy level published on the ANP website (Appendix 15), on 9th October 2018, the occupancy level at Rahova Penitentiary was 113,45% at 4 sqm/prisoner space with 1240 detained persons at a capacity of 1093 inmates. While it may seem that this means that the penitentiary can guarantee a minimum space of 3 sqm/person to all inmates, the reality is that this occupancy level is not reliable. This is due to the fact that the level is calculated for the entire space of the penitentiary, without a separation depending on the type of regime that is applied to the inmate. More clearly, each penitentiary has rooms that are used for each specific regime, according to the prison's profile. At this moment, Rahova Penitentiary can hold persons under preventive arrest measures (after their case is sent to trial), closed regime inmates and open regime inmates. Given these different types of regimes applicable to inmates, it is possible that, while the total occupancy level may seem compliant to legal standards, in reality, inmates that are under one type of detention regime are overcrowded, while others with a different regime have more space than the legal norm.

115. This situation of overcrowding in one section is not only possible but even probable in what concerns the closed regime, given the fact that the penitentiary's is mostly used for its closed regime profile. The probability of this situation is proved by the fact that, according to the data sent to me by Rahova Penitentiary, in July 2018, more than half of the prisoners held in closed regime did not benefit from 3 sqm/person space…

121. Rahova Penitentiary replied on the 26th July 2018 (Appendix no.19) specifying the following:

a. Regarding the quarantine period, at that moment there were:

- 7 rooms surfaced 19.30sqm, having 6 beds in each room;
- 24 rooms surfaced 19,58sqm, having 6 beds each room;
- 4 rooms surfaced 19,30 sqm, having 8 beds each room;
- 31 rooms surfaced 19,58 sqm, having 8 beds each room;
- 11 rooms surfaced 24,59 sqm, having 8 beds each room.

b. Regarding the closed regime, at that moment there were:

- 3 rooms surfaced 19,30 sqm, having 6 beds each room;
- 7 rooms surfaced 19,58 sqm, having 6 beds each room;
- 12 rooms surfaced 19,58 sqm, having 8 beds each room…

124. More specifically, the letter of 26th July showed that Rahova had at that time a 100% occupancy level for quarantine cells (all the beds were occupied) with:

- 7 rooms surfaced 19,30 sqm, having 6 beds each room: this means 3.21 sqm/inmate;
- 24 rooms surfaced 19,58 sqm, having 6 beds each room: this means 3.26 sqm/ inmate;
- 4 rooms surfaced 19,30 sqm, having 8 beds each room: this means 2.41 sqm/inmate;
- 31 rooms surfaced 19,58 sqm, having 8 beds each room: this means 2.44 sqm/inmate;
- 11 rooms surfaced 24,59 sqm, having 8 beds each room: this means 3.07 sqm/inmate.

125. These numbers show that, out of the 544 prisoners in quarantine, 280 (51.4%) had less than 2.5 sqm surface in their cell.

126. Regarding the closed regime, the Letter of 26th of July stated that, at an occupancy level of 100% (all the beds are occupied) the surfaces of the cells are:

- 3 rooms surfaced 19,30 sqm, having 6 beds each room: this means 3.21 sqm/inmate;
- 7 rooms surfaced 19,58 sqm, having 6 beds each room: this means 3.26 sqm/inmate;
- 12 rooms surfaced 19,58 sqm, having 8 beds each room: this means 2.44 sqm/inmate.

127. These numbers show that, out of 156 inmates held in the closed regime, 96 of them (61.5%) had less than 2.5 sqm surface.

128. These new numbers that were clarified by the letter of 24th August 2018, have practically confirmed the fact that the

> overall occupancy level for the entire prison is not sufficiently relevant to establish if a person who will be detained there will have a minimum surface of 3 sqm. As I have said, even if the overall occupancy level at 3sqm would be under 100%, the minimum surface is not ensured for every detained person in the quarantine and closed regime rooms."

17. Dr Chirita went on to describe the general conditions at the Rahova Penitentiary in the following terms:

> "137. On the 24th October 2016 the Romanian Ombudsman visited the Rahova Penitentiary and made recommendations (Appendix no.23) about the overcrowding that was up to 149,73%, the replacement of broken windows and mattresses infected with bedbugs, intensification of pest control activity, distribution of fresh fruits and vegetables, fitting of systems for artificial lighting and entrance doors etc.
>
> 138. Regarding the visit made by the Romanian Ombudsman, the Rahova Penitentiary has published a response, dated 29th September 2017 (Appendix no. 23). Regarding the overcrowding, the penitentiary just mentioned that they are undertaking constant measures to improve the situation. Regarding the windows, the penitentiary stated that all of them had been replaced with PVC and insulating glass and also the doors had been repaired or replaced. Also, it was mentioned that the penitentiary buys new mattresses every year in order to replace the ones that cannot be used anymore. Regarding the pest infestation, there have been measures taken and, according to the authorities, there had not been any new complaints regarding the issue. In what concerns the lack of fruit in the prisoners' diet, the penitentiary mentioned that it now buys apples that are served to the detained persons."

18. In respect of the Iasi Penitentiary at which the Appellant might be held at the point following a conviction, the report provided by Dr Chirita gives the following information:

> "*Regarding Iasi Penitentiary detention conditions*
>
> 157. According to the official data mentioned before, on 9th October 2018, the occupancy level of Iasi Penitentiary was 153.99% at a 4sqm space/person. This leads to an occupancy level of 115.49% at 3sqm/person. The prison is clearly overcrowded.
>
> 158. According to Order no. 2773/C/2017, at this moment, all 3 detention buildings of Iasi Penitentiary are overcrowded and do not offer sufficient access to natural light or air, or they lack ventilation. Moreover, in 1 out of the 3 detention buildings there is mould, infiltrations and dampness present."

19. Following the receipt of Dr Chirita's report it was passed to the Respondent for their observations. Under cover of a letter of the 19th November 2018 two further pieces of correspondence were forwarded by the Respondent to the CPS. Firstly, there was a letter dated 14th November 2018 from the Police Commissioner who had previously written in respect of the assurances that the Appellant would be detained in the Ialomita Custody Centre whilst he was the responsibility of the police at the pre-indictment phase of the proceedings. In response to Dr Chirita's report the Police Commissioner provided the following information and assurance:

> "1. As concerns the location where Mr. Scerbatchi Viorel will be probably incarcerated having regard to the fact that the detainment and remand prisons with the General Direction of Bucharest Police are currently subject to repair and refurbishment works, we uphold the additional information conveyed in the previous correspondence. Against this background, if extradited to Romania, the person will be incarcerated *exclusively in the Detainment and Remand Prison with the Ialomita Police Inspectorate where he will be subject to the conditions of detention as described, no matter the factors which can appear during the enforcement of the preventive measure.*
>
> 2. Furthermore, we would like to indicate that the identification in the arrest warrant of the place where the defendant shall be incarcerated – art. 230 para. 3 letter i) Code of criminal procedure (referred to in the request) has to be done in compliance with the provisions of art. 75 para. 1 of Law no. 302/2004 on international judicial cooperation in criminal matters, according to which *"if the extradition was granted on a certain condition, **the court** **which requested the extradition shall take the necessary measures to comply with the condition imposed by the requested state and shall issue guarantees to this effect".*** So it follows that in this case the court which requests the extradition has the obligation to name the detention facility in accordance with the guarantees sent (which have been previously described).
>
> Against this background, we would like to mention that according with the provisions of art. 89 para. 2 of Law no. 302/2004 on international judicial cooperation in criminal matters *"where informed about the tracking or detainment of the requested person on the territory of another member state, the European arrest warrant in Romanian and the foreign language **shall be sent by the issuing court** by fax, e-mail or any safe means of communication which leaves a written record to the competent foreign authority within the time period as indicated by the latter",* which means that the court which issued the European arrest warrant, the guarantees and the additional information necessary for the enforcement of the warrant is the court before which the requested person shall

appear and which permanently communicates with the competent foreign authority.

3. Furthermore, against the background of the opinions expressed in the document looked at we would like to make the following observations:

The domestic legislation has provided for the minimum conditions of detention which our institution, to which detainment and remand prisons are subordinated, has to ensure to persons deprived of their freedom and if not, as a compensation mechanism for each period of 30 days served under improper conditions, even if not consecutive days, additional 6 days shall be considered served.

For the purpose to ensure the exercise of the right of persons deprived of their freedom to compensation for accommodation under improper conditions, no matter the legal nature of the custodial measure, the Ministry of Internal Affairs has the obligation to make annually an inventory of detention spaces indicating the conformity/lack of conformity of the classification criteria provided for in art. 55 index 1 para. 3 of Law no. 254/2013.

This legal obligation has been fulfilled by the Ordinance of the Minister of Internal Affairs no. 140/2017, whereas the classification of detainment and remand prisons under the subordination of the Ministry of Internal Affairs has been updated successively, any time changes occurred which could have generated their conformity/lack of conformity in terms of the legal criteria mentioned.

For these reasons, from institutional perspective, we think that the allegations of the lawyer do not represent a legal opinion as they are contradicted by the legal texts themselves whose applicability he challenges. As a matter of fact, the purpose of the guarantees offered by the Romanian authorities to the partners involved in extradition procedures is to ensure them of the existence of the legal framework necessary for guaranteeing the exercise of the legal rights of persons deprived of their freedom, as well as to identify the optimum solutions for its transposition against the background of the current administrative realities."

20. In a letter dated 16th November 2018 the Ministry of Justice National Administration of Penitentiaries provided a specific response to the aspects of Dr Chirita's report addressing the facilities for which they have responsibility, and in which he would be held at the trial stage and in order to serve any prison sentence imposed, as follows:

"*As concerns point 88-89:*

If the detainee is taken into the custody of the Romanian authorities on the Henri Coanda Airport Bucharest, he will be temporarily incarcerated in the Rahova Prison Bucharest where he will undergo the quarantine period of 21 days in a room which shall ensure a minimum individual space of 3 square meters.

As concerns point 106:

If the detainee is taken into the custody of the Romanian authorities on the Henri Coanda Airport Bucharest, **he will be temporarily incarcerated in the Rahova Prison Bucharest where he will undergo the quarantine period** of 21 days **in a room which shall ensure a minimum individual space of 3 square meters.**

During the quarantine and observation period the behaviour and personality of the inmates is analysed, medical checks are conducted, as well as hygiene activities; educational, psychological and social needs are assessed with a view to establish the intervention and assistance areas.

When the quarantine period ends, the regime for the penalty enforcement is established, whereas members of the specialized commission shall take into consideration the following criteria:

- ✓ Duration of the custodial penalty;
- ✓ Degree of risk of the convicted person;
- ✓ Criminal record;
- ✓ Age and health status of the convicted person;
- ✓ The convicted person's conduct, positive or negative, including in previous detention periods;
- ✓ The needs identified and the abilities of the convicted person which are necessary for its inclusion in educational programs, psychological assistance and social assistance activities;
- ✓ The convicted person's wish to work and to participate in educational, cultural, therapeutic, psychological counselling and social, religious activities, as well as school and vocational training.

As concerns points 132-133 and 157-158:

Law no. 169/2017 on the amendment and supplementation of Law no. 254/2013 on the enforcement of penalties and custodial measures ordered by judicial bodies within the

criminal proceedings provides for a compensatory mechanism. Against this background, when the calculation of the penalty served is performed, also the enforcement of the penalty under improper conditions has to be taken into account, no matter the penalty enforcement regime, as a compensatory measure, in which case, for each period of 30 days served under improper conditions, no matter if they are not consecutive, additional 6 days shall be considered as served from the penalty imposed.

In the sense of this legal act also the accommodation in a space which is smaller or equal to 4 square meters/detainee has to be considered served under improper conditions *(which shall be calculated excluding the area of the lavatories and food storage spaces, by dividing the total area of detention rooms to the number of persons accommodated in the respective rooms, no matter the setting of the respective rooms).*

So it follows that invoking this compensatory mechanism in order to characterize the conditions of detention in Rahova and Iasi Prisons is unjustified, having regard to the fact that for Scerbatchi Viorel the Romanian State issued guarantees concerning ensuring an individual minimum space of 3 square meters as opposed to the piece of legislation which requires the compliance with the European standard as compared with the individual space of 4 square meters.

The Romanian State would also like to indicate that currently the Romanian penitentiary system is still faced with the issue of overcrowding in prison considering a space of more than 4 square meters (with 116% occupation of the accommodation capacity), but fulfils the additional criteria (which compensate for the reduction of the individual minimum space up to 3 square meters), as mentioned in the judgment of the European Court of Human Rights in the case Mursic against Croatia, so that the guarantees offered ensure the British partners that Scerbatchi Viorel will not be subjected to any inhumane or degrading treatment during the enforcement of the penalty in Romania.

Furthermore, the Romanian Government approved by memorandum a timetable of investments in the infrastructure of the penitentiary system and the criminal policies adopted by the Government allowed for a downward trend in terms of the number of detainees incarcerated in the penitentiary system.

The detention facilities in Rahova Bucharest and Iasi Prisons have been considered inappropriate, having in common the issue of not ensuring an individual minimum space bigger than 4 square meters. The classification of these buildings based on the criteria provided for in art. 55 index 1, para 3 letter e and f

of Law no. 254/2013 amended through Law no. 169/2017 does not necessarily characterize all detention rooms in the above mentioned facilities. The classification of the rooms is done in compliance with the provisions of art. IV para. 1-6 of Law no. 169/2017 as follows:

(1) Within 45 days since the entry into force of the present legislation, the Commission provided for in art. 11 shall conduct an analysis of the buildings mentioned in art. 111 in order to establish which of them are subject to the provisions of art 55. Index 1 para. 3 of Law no. 254/2013 with subsequent amendments and supplements, concerning improper conditions of detention.

(2) As concerns the criterion mentioned in art. 55 index 1 para.3 letter a of Law no. 254/2013 with subsequent amendments and supplements, the Commission shall conduct the analysis taking into consideration the average monthly index of overcrowding for each building analysed.

(3) As concerns the criterion mentioned in art. 55 index 1 para. 3 letter b and f of Law no. 254/2013 with subsequent amendments and supplements, the Commission shall conduct the analysis also taking into consideration the existence of decisions given by national or international courts in relation with deficiencies in terms of external or internal facilities pertaining to the buildings analysed.

(4) As concerns the criterion mentioned in art. 55 index 1 para. 3 letter c of Law no. 254/2013 with subsequent amendments and supplements, the Commission shall conduct an analysis depending on the national standards in the field.

(5) As concerns the criterion mentioned in art. 55 index 1 para. 3 letter d of Law no. 254/2013 for the period 24th July 2012 and until the entry into force of the present legislation, the Commission shall conduct the analysis taking into consideration the schedule for the provision of heating agent as appropriate for the cold season. For the period after the entry into force of the present legislation the appropriate temperature shall be determined by daily measurements in the buildings.

(6) As concerns the criterion mentioned in art. 55 index 1 para. 3 letter e of Law no. 254/2013 with subsequent amendments and supplements, the Commission shall conduct the analysis taking into consideration the existence of one lavatory with door and locking system, in compliance with the national standards concerning sanitation, as well as the standards which require the provision of the right to individual and collective hygiene for detainees.

As concerns points 137-138:

On occasion of the visit of the Ombudsman on 24th October 2016 the degree of overcrowding had reached 149.73% as compared to an individual minimum space of 4 square meters.

Rahova Bucharest Prison had on 15th November 2018 a number of 1,238 detainees on 1,224 dedicated places as compared to an individual minimum space of 4 square meters."

21. In turn this correspondence was provided to Dr Chirita, who provided an addendum to his report addressing that material dated 22nd November 2018. His response to the letter from the Police Commissioner is in the following terms:

"1. Regarding the affirmation that the RP will only be held in the Ialomita Arrest Centre for the entire duration period because the units in Bucharest are under renovation:

-I do not know if there are renovations being done in all of the 12 arrest centres in Bucharest at this time. However, it is impossible that the state would have undergone these renovations in such a manner that it would be impossible to hold arrested persons in the centres. For this reason, even if there would be renovations made, it would not make it impossible to take the RP there.

-the fact that the RP will only be held in Ialomita arrest centre cannot be assured for the reasons stated in my report. As a matter of law, the RP will be taken to the arrest unit mentioned in the national arrest warrant.

2. Article 75 (1) of Law no. 302/2004 is a provision that refers only to the extradition procedure, with states that are not member of the European Union.

The legal provisions that regulate the European Arrest Warrant are set out in articles 84-102 of the same Law under the title "Provisions regarding the cooperation with states members of the European Union in the application of the Framework Decision no. 2002/584/JAI of the European Council of 13 June 2002 regarding the European arrest warrant and the procedures of rendition between member states". These articles do not have a similar provision to article 75 regarding extradition and also there is no provision that states that the procedure regarding extradition is also applicable to the European arrest warrant. There is only one provision that refers to assurances, article 90 that states that the Justice Minister gives the assurance that the RP will be transferred back to the executing state in some cases. Other than this, there is no legal provision in Law no. 302/2004 that states that the national authorities are obligated to respect assurances given in the procedure of the

> European arrest warrant. Therefore, as a matter of national law, the national authorities are not obligated to send the RP to Ialomita arrest centre.

22. His response to the letter from the National Administration of Penitentiaries was as follows:

> 1. Regarding para. No. 88-89 and 106:
>
> As I already stated in the main Legal Opinion, there is no possibility at this procedural stage for the RP to be placed at Rahova Penitentiary. It has no relevance whether the RP shall be taken into custody by Romanian authorities at Henri Coanda Airoport or any other place. Since the proceedings against RP are in the investigation criminal phase, he would be incarcerated in a preventive arrest and remand centre. Only after an official indictment, which implies sending the RP to trial, he would be incarcerated in a penitentiary and subjected to the quarantine period referred to in ANP's response.
>
> 2. Regarding para. No107:
>
> ANP cannot give any certain assurance that the 3sqm/ inmate would be respected. There are not and cannot be any reliable information on the number of detainees to be incarcerated and subjected to quarantine at that time.
>
> 3. Regarding para. No. 132-133 and 157-158:
>
> First, it is to be noticed that the above mentioned regards the after-trial situation in which the RP was convicted.
>
> I have referred to the system of compensatory measures because, through this mechanism, the prison conditions are analysed periodically. On the basis of these analyses, reports are subsequently drawn up which show the conditions of detention at that specific moment. Even these reports are made to be taken into consideration for applying this compensatory measures, they still are official documents on detention conditions.
>
> Secondly, assuming that ANP can offer at this time assurances that the minimum space of 3sqm per prisoner will be respected (not the case, at least for Iasi Penitentiary), if at the moment of RP's incarceration the penitentiary will be overcrowded these assurances cannot be respected as there will be no effective possibility to do so."

23. At the hearing it emerged that there was some potential ambiguity in relation to paragraph 158 of Dr Chirita's report and whether his observation in reference to order no. 2773/C/2017 related to circumstances in 2017 or circumstances at the time of

completing his report. We afforded firstly, the Respondent the opportunity to address in greater detail paragraph 158 and, if so advised, further material to be obtained from Dr Chirita in response to anything produced by the Respondent. The outcome of that further exchange of evidence was as follows.

24. On the 28th November 2018 the Respondent's Ministry of Justice forwarded information from the National Administration of Penitentiaries. The material directly bore on the question which was raised at the hearing namely a response to paragraph 158 of Dr Chirita's report. The correspondence provided the following assurance:

> "If Scerbatchi Viorel serves the imprisonment punishment in the Iasi Penitentiary, he will benefit from proper accommodation conditions with respect to daylight, ventilation, mould and water infiltration."

25. In response to that a considerable volume of material was provided by the Appellant including a further report from Dr Chirita which went well beyond the specific question which had been raised at the hearing, and as to which further submissions were sought, namely a response to the assurance provided above. Within the further report of Dr Chirita (dated 9th December 2018) he observed that Order no. 2773/C/2017 of the Justice Minister, which had raised criticisms of the inadequacy of the detention conditions at Iasi, was still in force. These criticisms included that the Iasi penitentiary was, overall, overcrowded and failed to offer sufficient access to natural light or air and lacked ventilation. One of the buildings used for detention was also subject to mould, infiltrations and dampness.

26. In addition to this Dr Chirita provided a commentary (along with a copy) of the UN Subcommittee on the Prevention of Torture's report on their visit to Romania undertaken from the 3rd-12th May 2016. A particular mention was made in that report of the prison at Iasi, expressing concern about a culture of fear and violence in the prison, leading to concerns in relation to the safety and wellbeing of those incarcerated within it. It noted there was overcrowding on the basis that there were at the time of the visit 1507 detainees against the official capacity of 730. It recorded complaints of vermin and old and filthy mattresses at the prison. Concern was also expressed about the use of handcuffs and other devices to restrain detainees in solitary confinement or in classified "high risk".

27. Dr Chirita goes on in his report to detail a rebellion which occurred at the Iasi penitentiary in July 2016 and notes a report from the 4th April 2018 made by the Federation of Trade Unions in the National Administration of Penitentiaries relating to an evacuation at Iasi Penitentiary as a result of the identification of a high risk of collapse in the building. Dr Chirita notes that this was a contention refuted by the Ministry of Justice. Further Dr Chirita produces photographs taken in the Iasi penitentiary which in his view support the overcrowded and inadequate conditions at the Iasi penitentiary. Further information is contained in Dr Charita's report in relation to the Rahova Penitentiary but this material was not the subject matter of the court's permission to lodge further material, nor could it be said to relate to the further assurance provided on the 28th November 2018.

28. Prompted by the nature and extent of the material provided by the Appellant, the Respondent provided a response dated 11th December 2018. That response deals point

by point with the material produced by Dr Chirita. The overarching point raised in the response in relation to the Iasi Penitentiary is that, as specified in the assurances, given that this is an accusation warrant, the location of the place at which the Appellant will ultimately be detained has yet to be identified. In relation to the Minister's 2017 Order the Respondent points out that it has never been the Respondent's case that there are no problems to be resolved at Iasi, but rather that there is an assurance that if the Appellant were to be detained at Iasi he will be detained in areas free from those concerns.

29. In respect of the UN report it is pointed out that this relates to a visit in 2016, predating the 2017 order and raising matters which were not identified in that report. It is noted that in fact the Appellant's own evidence is that the current occupancy of Iasi at 662 persons is significantly lower than that identified by the UN report. The contentions in relation to building collapse in April 2018 (although not referred to previously) were strongly disputed by the Romanian authorities and therefore, it is submitted, takes matters no further. It is pointed out that the photographs provided are of unknown provenance and date.

The Legal Principles

30. It is a wholly uncontroversial position that a person cannot be extradited to a country where he or she would be at a real risk of being treated in a manner prohibited by Article 3. Support for this proposition can be provided from domestic authorities as well as international law sources.

31. In terms of domestic authority, Lord Bingham in the case of R (Ullah) v Special Adjudicator [2004] 2 AC 323, clearly sets out this broad proposition in paragraph 24 of his speech. Greater detail in the domestic jurisprudence was provided by the judgment in the Divisional Court in the case of Elashmawy v The Court of Brescia [2015] EWHC 28 (Admin). The court summarised the operative principles in an Article 3 case concerned with prison conditions in paragraphs 48-50 of its judgment as follows:

> "***Article 3*** **and prison conditions: the legal framework**
>
> 48. ***Article 3*** of the Convention provides:
>
> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".
>
> 49. A number of general propositions are very well established by ECtHR case law and accepted by the courts of England and Wales in relation to Article 3 and its application to prison conditions in the context of extradition. We think that they can be summarised as follows: (1) the extradition of a requested person from a Contracting state to another state (whether or not a Contracting state) where that person will be held in detention (either awaiting trial or sentence or in order to serve a sentence lawfully imposed) can give rise to an Article 3 issue, which will engage the responsibility of the Contracting state from which the extradition of the requested person is sought. (2) If it is shown that there are substantial grounds for believing that the requested person

would face a "real risk" of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country then Article 3 implies an obligation on the Contracting state not to extradite the requested person. (3) 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. (4) Whether the minimum level is attained in a particular case depends on all the circumstances, such as the nature of the treatment, its duration, its physical and mental effects and, possibly, the age, sex and health of the person concerned. In that sense, the test of whether there has been a breach of Article 3 in a particular case is "relative". (5) The detention of a person in a prison as a punishment lawfully imposed inevitably involves a deprivation of liberty and brings with it certain disadvantages and a level of suffering that is unavoidable because that is inherent in detention. But lawful detention does not deprive a person of his Article 3 rights. Indeed, Article 3 imposes on the relevant authorities a positive obligation to ensure that all prisoners are held under conditions compatible with respect for human dignity, that they are not subjected to distress or testing of an intensity that exceeds the level of unavoidable suffering concomitant to detention. The health and welfare of prisoners must be adequately assured. (6) If it is alleged that the conditions of detention infringe Article 3**,** it is necessary to make findings about the actual conditions suffered and their cumulative effect during the relevant time and on the specific claims of the complainant. (7) Where prison overcrowding reaches a certain level, lack of space in a prison may constitute the central element to be taken into account when assessing the conformity of a given situation within Article 3. As a general rule, if the area for personal space is less than 3 metres^2 , the overcrowding must be considered to be so severe as to justify of itself a finding of a violation of Article 3: (see the ECtHR judgment of ***Ananyev v Russia*** (Applications Nos 425/07 and 60800/080910) of January 2012, referred to at [9] of ***Florea v Romania [2014] EWHC 3538 (Admin)***("***Florea***"). (8) However, if overcrowding itself is not sufficient to engage Article 3, other aspects of the conditions of detention will be taken into account to see if there has been a breach. Factors may include: the availability for use of private lavatories, available ventilation, natural light and air, heating, and other basic health requirements.

50. The legal principles with regard to extradition, prison conditions in Contracting States to the ECHR and Member States of the EU and whether Article 3 is engaged, have been recently restated by this court in ***Krolik (and others) v Several Judicial Authorities in Poland [2013] 1 WLR 490*.** There is no need to reconsider earlier authorities in this area. We can summarise the relevant principles as follows: (1) member states of the Council of Europe are presumed to be able and willing to fulfil their obligations under the ECHR, in the absence of clear, cogent and compelling evidence to the contrary. (2) That evidence would have to show that there was a real risk of the requested person being

subjected to torture or inhuman or degrading treatment or punishment. (3) This presumption is of even greater importance in the case of member states of the European Union. In such cases there is a strong, albeit rebuttable, presumption that EU member states will abide by their Convention obligations. Each member state is entitled to have confidence that all other EU states will abide by their Convention obligations. (4) The evidence needed to rebut the presumption ***and to establish a breach of Article 3 by the EU member state*** (our emphasis) will have to be powerful. However, Mr Fitzgerald, for the First Interested party, questioned whether a requirement of "something like an international consensus" (see [7] of ***Krolik***) is a useful test to apply on the question of whether the presumption had been rebutted."

32. Turning to international law sources the proposition is also underpinned by authorities from both the European Court of Human Rights ("the ECtHR") and the Court of Justice of the European Union ("the CJEU"). Dealing firstly with authorities from the European Court of Human Rights, in the case of Mursic v Croatia [2017] 65 EHRR 1 the court addressed both the generic issues in relation to Article 3 and, building on the court's earlier decision in Ananyev v Russia [2012] 55 EHRR 18, specific issues which are engaged in the consideration of prison conditions, in particular relating to overcrowding and violations of Article 3. The relevant paragraphs addressing, firstly, the general principles in relation to Article 3 and, secondly, the correct approach to prison conditions and overcrowding are as follows:

"**(a) General principles**

96. Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 113, ECHR 2014 (extracts)).

97. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; *Idalov*, cited above, § 91; and also, *Kalashnikov v. Russia*, no. 47095/99, § 95, ECHR 2002-VI).

98. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear,

anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Idalov*, cited above, § 92; and also, *Pretty v. The United Kingdom*, no. 2346/02, § 52, ECHR 2002-III; *Ananyev and Others*, cited above, § 140; *Varga and Others*, cited above, § 70). Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity (see *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015)…

(c) Summary of relevant principles and standards for the assessment of prison overcrowding

136. In the light of the considerations set out above, the Court confirms the standard predominant in its case-law of 3 sq. m of floor surface per detainee in multi-occupancy accommodation as the relevant minimum standard under Article 3 of the Convention.

137. When the personal space available to a detainee falls below 3 sq. m of floor surface 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 (see paragraphs 126-128 above).

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:

(1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor (see paragraph 130 above):

(2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities (see paragraph 133 above);

(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 (see paragraph 134 above).

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 (see paragraph 106 above).

140. The Court also stresses that in cases where a detainee disposed of more than 4 sq. m of personal space in multi-occupancy accommodation in prison and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention referred to above (see paragraphs 48, 53, 55, 59 and 63-64 above) remain relevant for the Court's assessment of adequacy of an applicant's conditions of detention under Article 3 of the Convention (see, for example, *Story and Others v. Malta*, nos. 56854/13, 57005/13 and 57043/13, §§ 112-113, 29 October 2015)."

33. The CJEU has also given consideration to the question of Article 3 violations caused by prison conditions and overcrowding in the case of Criminal Proceedings v Aranyosi and Caldararu [2016] 3 CMLR 13. The proceedings concerned extradition under EAWs, and the jurisdiction of the court arose because of the parallel between Article 4 of the Charter of Fundamental Rights of the European Union which corresponds directly in substance to Article 3 of the ECHR. The question which was referred to the court was whether or not, when there was solid evidence that detention conditions in the member state issuing the EAW were incompatible with Article 4 of the Charter, the executing judicial authority must refuse to execute the European Arrest Warrant, or whether it should make surrender of the person conditional upon there being information provided by the issuing member state to satisfy the judicial authority that detention conditions would be compatible with fundamental rights. The conclusions which the court reached in relation to that question, and the procedures to be adopted, were set out as follows;

"90 In that regard, it follows from the case law of the ECtHR that art.3 ECHR imposes, on the authorities of the State on whose territory an individual is detained, a positive obligation to ensure that any prisoner is detained in conditions which guarantee respect for human dignity, that the way in which detention is enforced does not cause the individual concerned distress or hardship of an intensity exceeding the unavoidable level of suffering that is inherent in detention and that, having regard to the practical requirements of imprisonment, the health and well-being of the prisoner are adequately protected (see judgment of the ECtHR in *Torreggiani v Italy* (43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, & 37818/10), judgment of 8 January 2013, §65).

91 Nonetheless, a finding that there is a real risk of inhumane 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.

92 Whenever the existence of such a risk is identified, it is then necessary that the executing judicial authority make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing Member State.

93 The mere existence of evidence that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, with respect to detention conditions in the issuing Member State does not necessarily imply that, in a specific case, the individual concerned will be subject to inhumane or degrading treatment in the event that he is surrendered to the authorities of that Member State.

94 Consequently, in order to ensure respect for art.4 of the Charter in the individual circumstances of the person who is the subject of the European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhumane or degrading treatment, within the meaning of art.4.

95 To that end, that authority must, pursuant to art.15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State.

96 That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring detention conditions, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons…

104 It follows from all the foregoing that the answer to the questions referred is that art.1(3), art.5 and art.6(1) of the Framework Decision must be interpreted as meaning that where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing Member State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine,

specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhumane or degrading treatment, within the meaning of art. 4 of the Charter, in the event of his surrender to that Member State. To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under art.7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned 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."

34. In the subsequent case of ML (Generalstaatsanwaltschaft Bremen) [2018] C-220/18 PPU one of the questions which arose for determination by the court was as to whether or not the authority responding to a European arrest warrant was required to assess the conditions of detention in all the prisons in which a person subject to the warrant might potentially be detained (including on a temporary or transitional basis), or only the conditions of the prison in which they were going to be detained for most of the time of their sentence. The conclusions of the court in relation to that issue are set out in the following paragraphs;

> "62 Thus, in order to ensure observance of Article 4 of the Charter in the particular circumstances of a person who is the subject of a European arrest warrant, the executing judicial authority, when faced with evidence of the existence of such deficiencies that is objective, reliable, specific and properly updated, is then bound to determine specifically and precisely, whether, in the particular circumstances of the case, there are substantial grounds for believing that, following the surrender of that person to the issuing Member State, he will run real risk of being subject in that Member State to inhumane or degrading treatment, within the meaning of Article 4, because of the conditions for his detention envisaged in the issuing Member State (judgment of 5 April 2016, *Aranyosi and Caldararu*, C-404/15 and C659/15 PPU, EU:C:2016:198, paragraphs 92 and 94).
>
> 63 To that end, that authority must, pursuant to Article 15(2) of the Framework Decision, request of the judicial authority of the issuing Member State that there be provided as

a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that Member State. That request may also relate to the existence, in the issuing Member State, of any national or international procedures and mechanisms for monitoring detention conditions, linked, for example to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons (judgment of 5 April 2016, *Aranyosi and Caldararu*, C-404/15 and C659/15 PPU, EU:C:2016:198, paragraphs 95 and 96).

64 The issuing judicial authority is obliged to provide that information to the executing judicial authority (judgment of 5 April 2016, *Aranyosi and Caldararu*, C-404/15 and C659/15 PPU, EU:C:2016:198, paragraph 97).

65 If, in the light of the information provided pursuant to Article 15(2) of the Framework Decision, and of any other information that may be available to the executing judicial authority, that authority finds that there exists, for the individual in respect of whom the European arrest warrant has been issued, a real risk of inhumane or degrading treatment, within the meaning of Article 4 of the Charter, the execution of that warrant must be postponed but it cannot be abandoned (judgment of 5 April 2016, *Aranyosi and Caldararu*, C-404/15 and C659/15 PPU, EU:C:2016:198, paragraph 98).

66 By contrast, in the event that the information received by the executing judicial authority from the issuing judicial authority leads it to rule out the existence of a real risk that the individual concerned will be subject to inhumane and degrading treatment in the issuing Member State, the executing judicial authority must adopt, within the time limits prescribed by the Framework Decision, its decision on the execution of the European arrest warrant, without prejudice to the opportunity of the individual concerned, after surrender, to have recourse, within the legal system of the issuing Member State, to legal remedies that may enable him to challenge, if need be, the lawfulness of the conditions of his detention in a prison of that Member State (judgment of 5 April 2016, *Aranyosi and Caldararu*, C-404/15 and C659/15 PPU, EU:C:2016:198, paragraph 103)…

The prisons to be assessed:

77 In accordance with the case-law referred to in paragraphs 61-66 of this judgment, the executing judicial authorities responsible for deciding on the surrender of a person who is the subject of a European arrest warrant must determine, specifically and precisely, whether, in the circumstances of a particular case, there is a real risk that that person will be

subjected in the issuing Member State to inhumane or degrading treatment.

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

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

35. Dealing with the question of assurances provided by requesting states the ECtHR provided parameters for assessing those assurances in the case of Othman v UK [2012] 55 EHRR 1 at paragraphs 187-189 as follows;

"187 In any examination of whether an applicant faces a real risk of ill-treatment in the country to which he is to be removed, the Court will consider both the general human-rights situation in that country and the particular characteristics of the applicant. In a case where assurances have been provided by the receiving state, those assurances constitute a further relevant factor which the Court will consider. However, assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving state depends, in each case, on the circumstances prevailing at the material time.

188 In assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human-rights situation in the receiving states excludes accepting any assurances whatsoever.

However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances.

189 More usually, the Court will assess first, the quality of assurances given and, second, whether in light of the receiving state's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:

(1) whether the terms of the assurances have been disclosed to the Court;

(2) whether the assurances are specific or are general and vague;

(3) who has given the assurances and whether that person can bind the receiving state;

(4) if the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them;

(5) whether the assurances concerns treatment which is legal or illegal in the receiving state;

(6) whether they have been given by a Contracting State;

(7) the length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances;

(8) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers;

(9) whether there is an effective system of protection against torture in the receiving state, including whether it is willing to co-operate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible;

(10) whether the applicant has previously been ill-treated in the receiving state;

And

(11) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State."

36. In the course of his submissions Mr Fitzgerald drew attention to observations made by Lloyd Jones LJ in Kirchanov and Others v Various Bulgarian Judicial Authorities [2017] EWHC 1285 where at paragraph 15 of their judgment the court observed, in seeking assurances from the Bulgarian Authorities, as follows:

> "We appreciate that the Bulgarian authorities are currently taking steps to improve conditions in Bulgarian prisons. However, until such time as these improvements are completed, this court has to ask for assurances as to the conditions in which these appellants will be held. We wish to make clear that we need to be assured as to precisely where each of the appellants will be held at every stage throughout his detention; we need to be assured that the appellants will not be transferred to a different prison where minimum standards are not met; we need to be satisfied that the conditions in which each will be held will comply with the minimum international standards as to space and toilet facilities; we need to be satisfied that there is an effective system of monitoring those conditions."

37. Further, and in a similar manner, reliance was placed by Mr Fitzgerald on the observations of McCombe LJ in the case of Badre v Court of Florence [2014] EWHC 614. In paragraphs 52-53 of that judgment, having concluded that the District Judge in that case had been wrong to accept the general assurance of the Italian authorities, McCombe LJ went on to observe as follows:

> "52. In my judgment, Mr Summers' submission is correct. I am far from saying that in no case can a court in this country safely order an extradition to Italy. Like Mr Summers, I do not call into question for one minute the good faith of the Italian authorities in writing the letter that they did. However, it seems to me that, on the specific facts of this present case, the judgement of the European Court, together with the acknowledgment of a continuing systemic problem in the Italian prison system, has rebutted the presumption of compliance with the Convention which would normally arise in the case of a member state of the Council of Europe and of the European Union. This state of affairs, therefore, raises substantial grounds for believing that there is a real risk of treatment contrary to Article 3 and the Respondent has not produced sufficient material to dispel that belief.
>
> 53 For my part, I would have expected at least some information as to whether bail might be available to the Appellant in Italy and on what terms, and, if not available or if not likely to be granted, some information as to the specific institution or type of institution in which the Appellant would be confined and some information as to the prevalent conditions in that institution or those institutions."

38. In response to his reliance on these authorities, Mr Summers QC on behalf of the Respondent drew attention to the observations of Burnett LJ (as he then was) in the

case of GS and Others v The Central District of Pest, Hungary [2016] 4 WLR 33 where he observed in connection with the judgment in Badre as follows;

> "26 It is a central feature of the submissions advanced on behalf of the appellants that, as has happened in many cases (some already mentioned) and was considered desirable in *Badre*, an assurance in respect of each appellant should identify the penal institutions in which he or she would be held both on remand and following conviction. It is, with respect, a mistake to elevate the observation in [53] of what might have been expected in the particular circumstances of one case into a general requirement which qualifies the test articulated by the Strasbourg Court…
>
> 27 *Badre* recognised the good faith of the Italian authorities in giving the assurance, as do the appellants in this case with regard to the assurance given by the Hungarian authorities. The impact of that good faith and the particular impact of the assurance having come from a Convention state which is also a member of the European Union were considered by this court in *Ilia.* Question 8 in *Othman* goes to verification of compliance with the assurance, and unfettered access to a detained person's lawyers, but was considered in the context of question 6 (whether the state giving the assurance is a Convention state). At [40] Aikens LJ identified the principle to be applied:
>
> "As for question (8) in ***Othman*** at [189], it is important also to recall that we are dealing with cases in which the assurance will have been given by the JA or a responsible minister or responsible senior official of a government department of a Council of Europe or EU state. In our view there must be a 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 unless there is cogent evidence to the contrary. This is consistent with the view of the Court of Justice of the European Union ("CJEU") expressed at [83] of *R(NS Afghanistan) v Secretary of State for the Home Department [2013] QB 103* at [83]. That case was concerned with the Common European Asylum System. However the CJEU emphasised that the objective of the EU is to create an area of "freedom, security and justice" and the EU is based upon "mutual confidence and a presumption of compliance by other member states with European Union law and, in particular, fundamental rights". These statements reflect closely those made in paragraphs (5), (10) and (12) of the preamble to the Council Framework Decision of 13 June 2002 ("the FD 2002"), on which Part 1 of the EA is based."

39. These observations of Burnett LJ in the case of GS were endorsed by Singh LJ and Carr J the recent case of Fuzesi v Budapest – Capital Regional Court, Hungary [2018] EWHC 1885.

40. Against the background of these authorities we are satisfied that, as Burnett LJ set out in GS, there is no general requirement that each and every penal institution in which a

requested person may be housed whilst in detention must be specified in any assurance. The strength and scope of the assurance, and whether it should include such details, will depend upon the nature of the evidence in the case, both as to the circumstances in the territory of the requesting authority and also in relation to the specific circumstances of the requested person. What is critical, measured against amongst other things the non-exhaustive factors from paragraph 189 of Othman, is that the assurance is of sufficient strength and scope to provide a secure and practical guarantee that the requested person will be protected against the risk of ill-treatment. That will, of course, depend upon an evaluation of the particular circumstances depicted by the evidence available to the court.

41. Turning to the specific circumstances of Romania there have been a sequence of cases dealing with the real risk of ill-treatment arising from overcrowded prison conditions. The position in relation to those earlier authorities such as Florea v Romania [2014] EWHC 2528 and The Court in Mures, Romania, v Zagrean [2016] EWHC 2786 (Admin) has been to some extent overtaken by the emergence of a pilot judgment from the ECtHR in the case of Rezmives and others v Romania (Applications no. 61467/12, 39516/13, 48231/13 and 68191/13). The court noted that there had been findings of violations of Article 3 in relation to prison conditions in Romania dating back to 2007-2008. In 2012 the court had identified in the case of Stanciu (Application no. 35972/05) the existence of a structural problem of overcrowding in Romanian prisons which required to be addressed. The conclusions leading to the inception of the pilot judgment procedure were set out by the court in the following paragraphs;

> "109. More than four years after identifying the structural problem, the Court is now examining the present cases, having already found a violation of Article 3 of the Convention in 150 judgments on account of overcrowding and inadequate material conditions in several Romanian prisons and police detention facilities. The number of findings of Convention violations on this account is constantly increasing. The Court notes that as of August 2016, 3200 similar applications were pending before it and that these could give rise to further judgements finding violations of the Convention. The continuing existence of major structural deficiencies causing repeated violations of the Convention is not only an aggravating factor as regards the State's responsibility under the Convention for a past or present situation, but is also a threat for the future effectiveness of the supervisory system put in place by the Convention.
>
> 110. The Court notes that the applicants' situation cannot be detached from the general problem originating in a structural dysfunction specific to the Romanian prison system, which has affected a large numbers of people and is likely to continue to do so in future. Despite the legislative, administrative and budgetary measures taken at domestic level, the structural nature of the problem identified in 2012 still persists and the situation observed thus constitutes a practice that is incompatible with the Convention.

> 111. Having regard to that state of affairs, the Court considers that the present cases are suitable for the pilot-judgment procedure."

42. The practical effects of the existence of the pilot judgment in Rezmives is that effective assurances are required as to the conditions in which a requested person may be held in Romania so as to ensure that there is no risk of ill-treatment. This was the approach taken in the case of Grecu v Cornetu Court Romania [2017] EWHC 1427; [2017] 4 WLR 139. Against this background, what the Appellant contends is that the short-comings of the assurances which have been given in the present case identified by Dr Chirita justify the conclusion that there is a risk that if the Appellant is extradited he will be held in conditions which will breach his Article 3 rights and that therefore the Appellant should be discharged. We now turn to the details of those submissions and the conclusions which we have reached in relation to them.

Submissions and Conclusions

43. For the purposes of his submissions Mr Fitzgerald approached the Appellant's detention by disaggregating it between the various periods of the criminal proceedings. He started by focusing on the pre-indictment or pre-trial phase. It will be recalled that the assurance provided by the Respondent is that he will be held in the Ialomita County Remand and Provisional Arrest Centre and that he will be provided there with a minimum available personal space of 3 square meters. Mr Fitzgerald relied upon the evidence of Dr Chirita that, firstly, it will be the court (and not the authors of the assurances) which will decide where the Appellant will be held, undermining the reliability of this assurance, and, secondly, that it was highly unlikely that the Appellant would be held at Ialomita some 125km away from the centre of the investigation of his case in Bucharest. Given that the purpose of his detention is to complete the investigation of the allegation he will need to be closely on hand for further questioning or confrontation with witnesses.

44. Mr Fitzgerald contended that the practical reality in this instance was that the Appellant would be held at one of the police centres in Bucharest, each of which was the subject of adverse criticism from Dr Chirita which was not gainsaid by anything that had been provided by the Respondent. In circumstances where the original arrest warrant had not specified Bucharest, or indeed any other named detention centre, Mr Fitzgerald submitted that there was an overwhelming likelihood that the Appellant would not be sent to Ialomita during the pre-indictment phase. In any event he submitted that the detention of the Appellant in accordance with the assurance, which included him being confined to his cell of 3 metres squared of personal space with only one hour outside the cell would itself be in breach of Article 3.

45. We are unable to accept the validity of these submissions. Firstly, in relation to the court being in charge of the location of the Appellant's detention, it is important to note that part and parcel of the assurance included in the correspondence dated 14th November 2018 from the Respondent is the observation that the court ordering the location of the detention facility in the Appellant's case will have before it the guarantees which have been provided by the Respondent to this court. This point is not gainsaid in the evidence of Dr Chirita addressing this correspondence. It provides confidence that the court will be clear as to the assurance given that the Appellant must be detained at Ialomita during the pre-indictment stage, and we see no basis to

assume that this assurance will not be honoured in the decisions that the court will make.

46. Secondly, in our judgement it is of importance that the assurance which has been given is very specific and unambiguous in relation to detention at Ialomita. We do not consider that the distance involved between Ialomita and Bucharest is such as to undermine or lead to distrust the assurance given, even taking account of the need for him to be produced to the court, as well as for the purposes of the investigation, from time to time. There is some force in the observations made by Mr Summers on behalf of the Respondent that the investigation is, in reality, at a fairly advanced stage with a significant body of evidence having been assembled. We do not therefore consider that his detention some 125km from Bucharest at this pre-indictment stage of the proceedings is either impractical or such as to lead to a risk of a breach of the assurance. It is to be noted that Dr Chirita in his report, at paragraph 63, notes that prison conditions in the Ialomita County Remand and Provisional Arrest Centre are generally appropriate. This is consistent with the terms of the assurance given on 28th February 2018 that the Appellant will be held in a 9.2 metre square detention room designed for 2 occupants giving him 4.6 square metres of personal space. In our view the assurances are clear, specific and practical and therefore we have no reason to distrust or to discount those assurances in the present case. We are satisfied therefore that the assurance is fit for purpose in relation to the pre-indictment stage of the proceedings.

47. Mr Fitzgerald then turned in his submissions to the trial phase of proceedings. He submitted that the assurance was defective on the basis that there was no specific assurance as to the facility in which the Appellant would be detained. As such, in the light of the pilot-judgment in Rezmives, and given the systemic failure of the prison estate in Romania, there was a risk of ill-treatment which had not been addressed by the assurance provided. Mr Fitzgerald submitted that were the Appellant to be held at Rahova the evidence demonstrated that the requirement of 3 square metres of personal space could not be complied with.

48. In relation to the conviction phase, if the Appellant were to be convicted and sent to prison following any finding of guilt in his case, Mr Fitzgerald again relied upon the absence of any specific assurance as to the prison in which the Appellant will be held as a critical inadequacy of the assurances given. He further drew attention to the fact that on the evidence it was likely he would be held at Iasi. Bearing in mind paragraphs 157 and 158 of Dr Chirita's report, Mr Fitzgerald submitted that the evidence demonstrated that the prison conditions at Iasi were overcrowded and would give rise to a risk of ill-treatment and breach of Article 3.

49. In response Mr Summers submitted that since this was an accusation case it was unsurprising that the Respondent was unable to specify at this stage where the Appellant would go were he to be convicted and then imprisoned. He submitted that the kind of assurance given in this case was consistent with the approach which has been accepted by this court in other instances. For instance, in the case of Zagrean general assurances from the Romanian government that at least 3 square metres of individual space in closed conditions would be provided in any prison to which someone extradited from the UK would be sent to serve their sentence was accepted. In paragraph 58 of the court's judgment in that case it was noted that it was not the concern of the court how the goal of that assurance was to be achieved. In the case of

Grecu, following the pilot-judgment in Rezmives, the court addressed the question of assurances which would be acceptable in general terms. Affording the opportunity for varied undertakings to be given in that case, Irwin LJ stated as follows as to the content of the assurances which would be required:

> "50 For myself, I would grant a final opportunity for varied undertakings. There is the greatest incentive to foster the extradition system. It will be very highly undesirable if extradition to Romania stalls, in respect of these requested persons and no doubt others to follow. There are precedents for specific provisions in custody conditions (and indeed trial arrangements) to secure continuing extradition. Any undertaking will have to satisfy the court that prisoners extradited will, save for short periods, and to a minor extent (meaning a minor reduction below $3m_2$), be guaranteed at least $3m_2$ of personal space. Moreover the guarantee would need to be in clear terms, and terms which cover the whole of the anticipated terms of detention. In other words, the assurance would have to be in compliance with the test in *Mursic*."

50. It is notable that the court in that case did not require that the assurance provided should specify the prison facilities in which the Appellant might be held, but rather the court was content with a general assurance covering the whole of any period of detention of the Appellant. We see no reason to depart from the approach which has been taken by this court in the case of Grecu. The assurance which has been provided in relation to the minimum space to be provided to the Appellant in the trial and, if convicted, the sentence phase of the criminal proceedings is clear and specific. We do not consider that it is necessary for an assurance to specify where the Appellant is going to be held in order for it to be trustworthy and practical. In addition to the obvious importance of the preservation of mutual trust between states, in order for extradition procedures to be operational there is, additionally, an obvious incentive for specific and unambiguous assurances of the kind involved in this case to be honoured since the consequences of failing to do so for future extradition proceedings is clear and obvious.

51. In any event, on the basis of the material provided before us it is clear that, whilst we share the views expressed in Zagrean that it is not directly a concern of the court as to how the assurance is going to be complied with, it can be seen from the evidence that at the prison in Rahova there are parts of the accommodation which are clearly capable of providing the minimum 3 square metres of available personal space required by the assurance. The information contained in paragraphs 121, 124 and 126 of Dr Chirita's report demonstrates this. We are therefore satisfied that, again, the assurance which has been offered is one which meets the necessary requirements and provides a proper basis for the Appellant's extradition.

52. We accept that the position in respect of Iasi is, as is recognised in the letter from the Ministry of Justice National Administration of Penitentiaries dated 16th November 2018, that taking the facility overall there are problems to be resolved by the authorities in relation to overcrowding. Nevertheless, in our judgement reliance can still be placed upon the assurance provided by the Respondent that specific or bespoke arrangements will be made in his case to ensure that he is not held in

conditions which provide him with less than 3 square metres of personal space. How in detail that is secured and what practical measures are necessary to be put in place to provide it are a matter for the Romanian authorities who have provided the assurance.

53. Having considered the additional material produced following the court hearing in accordance in the court's direction we are satisfied that this makes no material difference to the conclusion that the assurances given in this case can be relied upon so as to obviate the risk of the Appellant being the subject of conditions of detention which would breach Article 3. Firstly, the assurance now provided on the 28th November 2018 is clear and specific in relation to the conditions of detention to which the Appellant will be subject in Iasi, were he to be detained there, over and above the amount of personal space which he would have available to him. As the Respondent observes, whilst it has not been disputed by the Respondent that there are legitimate issues and concerns in respect of parts of the Iasi Penitentiary (if that is where the Appellant is ultimately to be detained if he is convicted), nonetheless the assurance which is now before the court explains that he will not be held in any part of that facility which is the subject of inappropriate or harsh conditions which bring with them the risk of a breach of Article 3.

54. The criticisms which have been raised of some of the contents of Dr Chirita's latest report are in our view legitimate. The UN report is now at least to some extent overtaken by the more recent Justice Minister's order from 2017 and the inspections upon which that order is based. The material in relation to a decanting of detainees at Iasi is clearly contentious and not accepted by the Romanian authorities as having arisen from structural problems in part of the Iasi estate. It does not in our view undermine the credibility of the assurance which has been given, nor does it condemn the entirety of the Iasi Penitentiary. The photographs which Dr Chirita has produced are undated. None of this material individually or cumulatively leads to the conclusion that if Iasi Penitentiary proves to be the ultimate location of the Appellant's detention, were he to be convicted, then the assurance which has been offered is unreliable and will be breached, or that specific measures will not be taken in the case of the Appellant to ensure that he is kept in accommodation which is properly compliant with his Article 3 rights.

55. It follows that for all of these reasons we are satisfied that in the present case the assurances which have been offered in respect of each of the stages of the criminal proceedings which this Appellant faces are satisfactory and appropriate in order to address the risk of ill-treatment arising from prison conditions and overcrowding in Romania. The appeal must be dismissed.