Neutral Citation Number: [2015] EWHC 1710 (Admin)
Case No: (1) CO/5584/2014, (2) CO/3238/2014
& (3) CO/2107/2014

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2015

Before :

LORD JUSTICE AIKENS and MR JUSTICE SIMON

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Between :

(1) CRISTIAN IOAN BLAJ
(2) CLAUDIU STEFAN ROMAN
(3) NICOLAE TREBUIAN **Appellants**

- and -

(1) COURT OF ALESD, ROMANIA
(2) LAW COURT OF VALCEA, ROMANIA
(3) THE TERRITORIAL MILITARY COURT OF ROMANIA **Respondents**

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David Josse QC and Louisa Collins (instructed by **Virdee Solicitors**) for the **1st Appellant**
James Stansfeld (instructed by **Tuckers Solicitors**) for the **2nd Appellant**
Simon Gledhill (instructed by **HP Gower**) for the **3rd Appellant**
Mark Summers QC and Daniel Sternberg (instructed by **CPS**) for the **Respondents**

Hearing dates: 03/03/2015

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Judgment

Lord Justice Aikens :

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

2. These appeals were heard together because they raise the common issue of whether extradition of the three appellants to Romania pursuant to European Arrest Warrants ("EAWs") would be contrary to their rights under ***Article 3*** of the European Convention on Human Rights ("ECHR") because of the conditions in prisons in Romania. Each of the appellants has been convicted of serious offences in a Romanian court and each was sentenced to a prison term. All the appellants left Romania, and the EAWs seek their surrender to serve the outstanding sentences. Each appellant alleges that, if returned to serve his sentence in Romania, there are substantial grounds for believing that there is a real risk that he would be subjected to inhuman or degrading treatment or punishment because of the poor conditions in all Romanian prisons ("the ***Article 3***/prison conditions ground"). The first appellant also contends that the EAW seeking his surrender is invalid because the EAW does not comply with ***section 2(6)(b)*** of the ***Extradition Act 2003*** ("the EA") because it does not give the date of his conviction and sentence; alternatively that his surrender would disproportionately interfere with his rights under ***Article 8*** of the ECHR ("the ***Article 8*** ground"). The third appellant also raises the ***Article 8*** ground.

3. Romania has been an EU member state since 2007. Romania is therefore now designated as a Category 1 territory pursuant to ***section 1*** of the EA and so ***Part 1*** of the EA, as amended, applies to all proceedings concerning requests for extradition to it, including these appeals. We will call the various Romanian judicial authorities that seek the surrender of the appellants "the Romanian JAs" unless one authority has to be identified individually.

The offences of the three appellants, the EAWs seeking the appellants' extradition and the extradition proceedings below

4. Cristian Ioan Blaj ("Blaj") was born on 12 October 1982. Blaj was convicted of an offence of death by careless driving which was committed on 31 March 2007. The EAW seeking his extradition does not specify the date on which the conviction took place nor the date when sentence was imposed. However, it is accepted that Blaj was sentenced to serve a prison sentence of three years. The extradition of Blaj is sought by the Court of Alesd, pursuant to a "conviction" EAW issued on 18 November 2010. On 17 October 2013 the National Crime Agency ("NCA") certified the EAW under ***section 2(7)*** of the EA. Blaj was arrested in the UK on 21 November 2013. After a contested extradition hearing before District Judge Coleman ("DJ Coleman") on 12 November 2013, his extradition was ordered on 27 November 2013. He is on conditional bail.

5. Before DJ Coleman, Blaj resisted his extradition on four grounds. Only three of those grounds are pursued on appeal, viz. (i) that the EAW fails to comply with the requirements of ***section 2(6)(b)*** and so is not valid (the validity ground) ***;*** (ii) the Article 3/prison conditions ground and (iii) the ***Article 8*** ground.

6. Claudiu Stefan Roman ("Roman") was born on 19 October 1987. On 21 March 2012 Roman was convicted and sentenced by the Criminal Division of the Valcea Law Court to 5 years and 6 months imprisonment for an offence of grievous bodily harm. The sentence was affirmed by Pitasti Court of Appeal on 24 May 2012 and then by the Criminal Division of the High Court of Cassation and Justice on 17 September 2012. The extradition of Roman is sought by the Law Court of Valcea, which issued a "conviction" EAW on 10 April 2013. The EAW was certified by the Serious Organised Crime Agency ("SOCA" – the predecessor of the NCA) on 10 April 2013. Roman was arrested in the UK on 23 October 2013. There were lengthy contested extradition proceedings before District Judge Zani ("DJ Zani") which concluded with a written judgment on 8 July 2014, pursuant to which DJ Zani ordered Roman's extradition.

7. Before DJ Zani the principal ground on which extradition was resisted was that he had not deliberately absented himself from his trial, but he would not have a right of retrial if surrendered, so that his extradition must be barred by virtue of ***section 21 (7)*** of the EA. That ground was rejected and is not pursued on appeal. Instead, Roman wishes to argue a new point, viz. the ***Article 3***/prison conditions point.

8. Nicolae Trebuian ("Trebuian") was born on 7 September 1975. Trebuian was convicted and subsequently sentenced on 19 March 2001 to 6 years imprisonment for an offence of attempted murder committed on 15 April 1996. The sentence was subsequently amended and made final by the Supreme Court criminal section on 16 May 2000. The Territorial Military Court of Romania issued a "conviction" EAW on 3 April 2009. It was certified by SOCA on 6 September 2013 and Trebuian was arrested in the UK on 24 September 2013. After a contested extradition hearing on 2 May 2014 before Deputy Senior District Judge Arbuthnot ("the DSDJ") the extradition of Trebuian was ordered.

9. Before the DSDJ the principal ground argued against extradition on behalf of Trebuian was that it would be a disproportionate interference with his ***Article 8*** rights. That ground is maintained on appeal. In addition, Trebuian wishes to argue an ***Article 3***/prison conditions ground which was not argued below.

The issues on the appeals

10. The scheme of ***Part 1*** of the EA and the case law require a court to consider challenges to an extradition request made in an EAW in a proper order. If there is a challenge to the validity of the EAW document itself, that should be dealt with first: no EAW, no extradition. If an EAW complies with the statutory requirements of ***section 2***, then the next question to be considered is whether the offence for which the requested person's surrender is sought, is an extradition offence. If it is, then the possible bars to extradition should be considered in the order as set out in ***section 11.*** Accordingly, we will deal first with Blaj's "validity ground"; next with the ***Article 3***/prison conditions ground and, lastly, with Blaj and Trebuian's ***Article 8*** ground.

The appellant Blaj's challenge to the validity of the EAW.

11. Section 2(1), (2), (5) and (6) provide:

> 2 Part 1 warrant and certificate

(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.

(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—

(a) the statement referred to in subsection (3) and the information referred to in subsection (4), or

(b) the statement referred to in subsection (5) and the information referred to in subsection (6).

(5) The statement is one that—

(a) the person in respect of whom the Part 1 warrant is issued has been convicted of an offence specified in the warrant by a court in the category 1 territory, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6) The information is—

(a) particulars of the person's identity;

(b) particulars of the conviction;

(c) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;

(e) particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.

12. Blaj contended that the EAW seeking his return is invalid under ***section 2*** of the EA. Ms Collins argued that ***section 2(2)(b)*** and ***section 2(6)*** required that a "conviction" EAW must contain information which included, among other things: (a) particulars of the person's identity and (b) particulars of the conviction. Whilst she accepted that there is no principle that the date of conviction must always (and in all cases) be specified, she submitted that there was a requirement that, looked at as a whole, there should be sufficient particulars of conviction and sentence, relying on ***R (Bader) v Penal Division of the Veszprem County Court, Hungary [2011] EWHC 436***

(Admin). Ms Collins accepted that in Box B of the EAW, under the heading 'Final and enforceable Judgment', there are two reference numbers for the criminal sentence (one for the Court of Alesd and the other for the Court of Appeal of Oradea), but pointed out that it did not specify a date of conviction or sentence, nor did the EAW identify the date of conviction elsewhere.

13. In our view there is no substance in this point. Despite some earlier obiter observations to the contrary in ***Sandi v. Romania [2009] EWHC 3079 (Admin)***, at [30] , it is now well established that a "conviction" EAW need not necessarily contain the date on which the judgment or sentence was passed. The information which must be included are those facts and circumstances of conviction and sentence which enable the requested person to raise any relevant bars to extradition, see eg: ***R (Majchrzak) v Regional Court in Kielce, Poland [2011] EWHC 3634 (Admin)*** at [9]-[13]. In the present case, the EAW identifies the sentence of 3 years imprisonment under a reference number 523/R/2010 Oradea Court of Appeal and the date of the offence: 31 March 2007. The Appellant cannot contend that the absence of the precise date of conviction has prevented him raising a bar to extradition. Thus to take the most obvious example, the lack of a conviction date would not have prevented or hampered Blaj from raising an argument, under ***section 14,*** based on the passage of time since his conviction.

14. We therefore reject this ground.

Article 3/prison conditions in the context of extradition: general principles and their application to Romania: the two decisions in *Florea v Romania* in this court.

15. ***Article 3*** of the ECHR provides: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". In a number of recent cases the Divisional Court has had to consider the question of whether a person's extradition to a Category 1 territory should be barred because it is alleged that there are substantial grounds for believing that there is a real risk that the requested person would be subjected to inhuman or degrading treatment or punishment by virtue of prison conditions in the requesting member state of the European Union. In the past six months this court has considered the position in relation to Italy, Greece and Lithuania: see ***Elashmawy v Court of Brescia, Italy [2015] EWHC 28 (Admin); Atraskevic v Prosecutor General's Office, Republic of Lithuania [2015] EWHC 131 (Admin); Ilia v Appeal Court in Athens, Greece [2015] EWHC 547 (Admin);*** and ***Antonov and Baranauskas v Prosecutor General's Office, Republic of Lithuania [2015] EWHC 1243 (Admin).***

16. The legal principles in relation to breaches of ***Article 3*** by reason of prison overcrowding, lack of facilities and similar complaints in Category 1 EU states, and the status and applicability of assurances given by the receiving state in this context are discussed in those cases. A summary of the general principles is set out in ***Ilia v Greece*** at [30] to [40]. There was no argument as to the general legal analysis before us in these appeals, so there is no need to repeat it here.

17. The issue of ***Article 3/***prison conditions in relation to extradition of requested persons to Romania has recently been considered twice in the High Court in ***Florea v Romania [2014] EWHC 2528 (Admin),*** which we will call "***Florea 1***" and ***Florea v Romania [2014] EWHC 4367 (Admin),*** which we will call "***Florea 2"*** . ***Florea 1***

was listed in November 2013 to be a "lead case on Romanian prison conditions": see [4] of the judgment of the court, consisting of Rafferty LJ and Blake J. The decision in ***Florea 1*** was actually handed down on 15 July 2014. In that case the prison conditions issue was confined to overcrowding and did not relate to other possible problems concerning facilities in prisons. It was accepted that, under the Romanian sentencing regime, a person sentenced to a term of imprisonment of 3 years or less would serve the sentence in "semi-open" conditions, but someone who was sentenced to more than 3 years imprisonment would, at least in the first place, serve the sentence in "closed" conditions.

18. On the issue of what space should be available to individual prisoners in multi-occupation cells, this court took as its starting point the decision of the First Section of the European Court of Human Rights ("ECtHR") in ***Ananyev v Russia (Applications Nos 42525/07 & 60800/08: judgment dated 10 April 2012).*** In ***Ananyev*** the ECtHR had stated, at [145], that 4 square metres (2m by 2m) was the "desirable standard" for multiple occupancy prison accommodation. Where prisoners had at their disposal less than "three square metres of floor surface" then the overcrowding "must be considered to be so severe as to justify of itself a finding of a violation of ***Article 3***." The ECtHR went on to state, at [148], that when deciding whether or not there has been a violation of ***Article 3*** on account of lack of personal space for a prisoner, the ECtHR had to have regard to three elements: (1) each prisoner must have an individual sleeping space in the cell; (2) each prisoner "must dispose of at least three square metres of floor space"; and (3) the "overall surface of the cell must be such as to allow the detainees to move freely between the furniture items" in the cell. The absence of any one of those elements "creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of ***Article 3***".

19. The conclusions of this court in ***Florea 1*** are set out at [35] – [46] of its judgment which was given by Blake J. They were: (1) there is no inflexible international rule established by the Strasbourg case law that prohibits the return of a prisoner to a country whenever there is a reasonable likelihood that the prisoner will serve any time in a cell with less than 3 square metres of personal space. In that respect, the court followed the earlier decision of this court in ***Achmant v Judicial Authority Thessaloniki, Greece [2012] EWHC 3470 (Admin).*** (2) In the case of a prisoner whose sentence was 3 years and which would be served in a semi-open prison which was in other respects compliant, if he was in a "collective cell" where the personal space was about 1.56 square metres "whatever the precise arrangements for deployment of furniture" that would be a breach of ***Article 3.*** (3) However, if the appellant were to serve his sentence in a semi-open prison where his personal space would be more than 2 square metres the court would not be satisfied that there were substantial grounds of a real risk of a breach of ***Article 3*** rights. (4) If Romania were able and willing to give an undertaking that the appellant would serve his sentence in semi-open conditions in a cell where he had personal space in excess of 2 square metres, the court "would not be satisfied that there were substantial grounds for believing that there was a real risk of a violation of ***Article 3*** by reason of overcrowding". The court emphasised that this was a decision on the facts of that case and it was not setting new general standards for Romania or elsewhere.

20. The case came back before Blake J, sitting alone, on 27 November 2014. He gave judgment in ***Florea 2*** that day. In the meantime the further evidence from the Romanian Ministry of Justice indicated that there was more flexibility about whether a person sentenced to a three year prison term would serve it in a closed or semi-open regime. Such a person may start in a closed regime and then move to a semi-open regime later. In a letter of 29 August 2014 to the court, the Ministry said that it was impossible for it to guarantee that the appellant would be detained in a semi-open regime for the entirety of his 3 year sentence. But it gave an assurance that whilst the appellant was allocated to a closed regime he would be held in one of two prisons where he would be provided with personal space of between 3-4 square metres and if the appellant was allocated to a semi-open or open regime he would be held in one of 6 identified prisons and would be provided with personal space "in excess of 2 square metres". In response to comments by the appellant's expert on the issue of Romanian prison conditions, (Ms Diana Olivia Hatneanu, who provided expert evidence on behalf of the appellants in the current appeals), further clarification was provided by the Romanian Ministry of Justice.

21. Blake J's conclusions in ***Florea 2*** are at [19] to [28] of his judgment. They are: (1) Romania had embarked on a "programme reparation" to deal with the many findings of the ECtHR of violation of ***Article 3*** by reason of prison overcrowding. Priority had been given to closed prison conditions. (2) There was "no current evidence of a systemic failure to meet" the requirement of Romanian national law that prisoners in closed regimes have a minimum of 4 square metres of personal space. (3) There was no evidence of a consistent failure in recent years to meet the 3 square metre criterion for personal space favoured by the ECtHR. (4) If the court's attention had earlier been focused on closed prison conditions it was "quite likely that the generic evidential picture would not have reached such a state of concern as to have required specific undertakings at all". (5) Blake J was satisfied that if the appellant served some or all of his prison sentence in a closed regime in either of the two identified prisons "or elsewhere", "the minimum three metre threshold will be provided". Therefore it was not necessary "to make any evaluation as to what prison occupancy rates and overcrowding conditions are going to be like generally over the next 3 years in Romania". (6) The assurance that had been proffered in the letters of 29 August and 14 November 2014 was given by the government of Romania and the Ministry of Justice and would be respected. (7) The criteria set out at [189] of the ECtHR's decision in ***Othman v United Kingdom [2012] 55 EHRR 1,*** including that as to a satisfactory means of monitoring the assurance given, were all met to a sufficient degree. (8) Accordingly, the risk of a breach of ***Article 3*** that had concerned the court in July 2014 no longer existed and the appeal was dismissed.

***Article 3*/prison conditions in Romania: the evidence and the contentions of the parties in these appeals**

22. **Blaj:** Before DJ Coleman the challenge was in respect of one particular prison where Blaj was likely to be sent if extradited. This is Satu Mare prison, which had been the subject of evidence and comment in ***Florea 1*** and ***2.*** Ms Hatneanu wrote an expert's report on behalf of Blaj and gave oral evidence before DJ Coleman, who noted in her reasons that Ms Hatneanu "did not say that she had personally visited either of the prisons (*sic*) to which Mr Blaj is to be sent in the event of extradition". Dr Onaca, the Director for International Law and Judicial Cooperation at the Ministry

of Justice of Romania, had enclosed a letter from the National Administration of Penitentiaries ("NAP"). That letter confirmed that Blaj would be most likely to serve his prison sentence in a semi-open ("part time release") regime. The letter indicated that the NAP could not say where, precisely, Blaj would serve his sentence. The letter set out an assurance, in the following terms:

> **"**The [NAP] will have in view, depending on the legal situation and on the agreement of the person concerned, the assignment in a specialised penitentiary providing at least 2 sqm of individual space (for the penalty execution in part-time release scheme) and 3 sqm (for the penalty execution in secure care or high security schemes)".

23. DJ Coleman referred to the written and oral evidence of Ms Hatneanu. The DJ noted that Ms Hatneanu stated in cross-examination that the letter from the NAP set out the current law and prison occupancy rates in Romania correctly and, although it did contain an assurance she did not know if the authorities would comply with it. Ms Hatneanu also stated that although there were legislative reforms and measures taken by the Romanian government with the aim of reducing the prison population and so overcrowding, as a result of which there had been a decrease of some 200-300 up to August 2014, she could not say whether there was a continuing downward trend.

24. DJ Coleman accepted that there was overcrowding in Romanian prisons but that factor had to be considered with others, such as how many were in a cell, how long they were kept in the cell and the state of conditions generally in a prison. DJ Coleman concluded that, despite her concerns, there was not "clear and cogent evidence that if extradited there is a real risk that [Blaj] would suffer treatment in breach of ***Article 3***, namely degrading and inhuman treatment".

25. **The Romanian assurance of 26 February 2015:** On 27 February 2015 Dr Onaca sent a letter to the CPS enclosing a letter from the NAP "in respect of guarantees required by the Court of England and Wales referring to detention conditions in the context of procedures relating to EAWs". Dr Onaca stated that the NAP guarantee "will be applied to every person surrendered from England and Wales to Romania, pursuant to a Romanian EAW after today's date and until further written notice". The letter replaced "any previous undertakings provided in individual ongoing cases".

26. The NAP letter is addressed to Dr Onaca and is from the "Questor for penitentiaries", or the General Director of National Administration of Penitentiaries, Catalin Claudiu Bejan. It states that "the [NAP] guarantees that during any period of detention for the offences specified in the relevant EAWs":

> "The persons deprived of liberty will be detained in penitentiaries which will ensure exceeding 2 sqm of individual space if they execute the penalty to the semi-open or open regime and exceeding 3 sqm of individual space if they execute the penalty in the closed regime. We state that the individual space includes beds and furniture.
>
> Where the percentage occupancy figures for any prison exceeds or may in the future exceed 100% the Romanian authorities nonetheless assure that the requested person personally will at

> all times be accommodated in a cell in which he/she will personally be provided with personal space in excess of two or three metres squared dependent on the regime in which he is detained.
>
> If according to the provisions of Article 45(6) of Law 254/2013, the persons deprived of liberty are transferred, with the approval of the prosecutor handling the case, to the police arrest, the National Administration of Penitentiaries will make all efforts to these institutions in order to provide the individual space as mentioned above.
>
> The guarantees will remain in force until and unless written notice is provided by the National Administration of Penitentiary within the Romanian Ministry of Justice to the Crown Prosecution Office. "

27. The submissions to us of Mr David Josse QC on behalf of Blaj were: first, that DJ Coleman erred in respect of her findings as to the extent and impact of overcrowding in Romanian prisons and the importance of the findings of ECtHR cases concerning Romanian prison conditions and breaches of ***Article 3.*** Secondly, Mr Josse submitted that the effect of the ECtHR decisions, (starting with ***Ananyev***), which have been followed in the Divisional Court cases of ***Florea*** and ***Elashmawy***, is that the basic rule is that each prisoner must dispose of at least three square metres of floor space, although he accepted that this had been modified in ***Florea 1*** and ***2,*** so that the basic requirement in the case of a semi-open prison was 2 square metres of floor space. Thirdly, however, Mr Josse submitted that this figure must be *net* of the prisoner's bed and any other furniture occupying floor space. He noted that a bed will occupy 1.45 square metres of space, so that if a prisoner has 2 square metres of personal space *gross,* that leaves him very little left so as to be able to "move freely between the furniture items" as stipulated in ***Ananyev*** at [148]. He relied on the evidence in Ms Hatneanu's report of 22 April 2014 (para 24) that the effective living space of prisoners was drastically limited by empty beds and bunk beds.

28. Mr Josse further submitted that, for several reasons, the Romanian JAs should not be permitted to rely on the new assurance of 26 February 2015. It could have been produced earlier; because it had not been, it had not been the subject of close scrutiny by the expert or by the DJ; the reference to "individual spaces [including] bed and furniture" meant that it was less of an assurance than the previous one; moreover, it was not personal, but general and could apparently be revoked on notice for any reason. Mr Josse submitted that the new assurance was not "***Article 3*** compliant".

29. **Roman:** Mr James Stansfeld, for Roman, recognised that this ground had not been relied upon below, but submitted that Roman should be permitted to raise it now, relying on ***section 27(2)*** and ***(4)*** of the EA.[1] He wished to rely on a further report of

[1] ***Section 27(2)*** provides that the High Court may allow an appeal (from the District Judge) only if the conditions in ***section 27(3)*** or ***(4)*** are met. ***Section 27(4)*** provides: "The conditions are that – (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing; (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at an extradition hearing differently; (c) if he had decided the question in that way, he would have

Ms Hatneanu dated 3 December 2014 and an addendum to it dated 9 March 2015. Ms Hatneanu stated that if Roman is extradited, he would start his sentence in a closed prison (probably at Colibasi or Craiova prisons) but it was expected that at some point he would be held in an open or semi-open prison, probably Targu-Jiu, Pelendava or Drobeta-Turnu Severin, the first two of which are close to Roman's home in Romania. In the addendum report, Ms Hatneanu set out a table of statistics relating to the position of semi-open/open prisons as at 3 March 2015. The table showed the number of detainees, the prisons' capacity, the occupancy rate based on 4 square metres per person, the personal space per detainee (in square metres), the official capacity of the prisons and the official occupancy rate.

30. The Romanian JAs had provided a guarantee in respect of the conditions in which Roman would be detained if extradited. This was under cover of a letter to the CPS from Dr Onaca dated 19 January 2015 (so after Ms Hatneanu's first expert report on behalf of Roman) containing a letter from the NAP dated 6 January 2015. The NAP letter, which referred specifically to Roman, states:

> "The [NAP] guarantees that the respective person will execute the penalty in a subordinated unit which will ensure, depending on the execution scheme in which he will be distributed, 2 sqm, or 3 sqm of individual space including beds and furniture".

The NAP letter set out a table of prison occupancy as at 30 December 2014.

31. However, Mr Stansfeld submitted that the 6 January 2015 assurance was overtaken by the general assurance of 26 February 2015 so far as Roman was concerned. The later assurance was not ***Article 3*** compliant because the "individual space" included that for a bed and furniture and so the *net* space was considerably less than 3 square metres, which was, Mr Stansfeld submitted, now the ECtHR norm. Further, the new undertaking was unsatisfactory because of the ability to revoke it for any reason on notice.In so far as ***Florea 1*** stated that the space could be 2 square metres in the case of a semi-open prison, that was inconsistent with the ECtHR cases and was wrong. He also submitted that ECtHR cases on Romanian prison conditions in 2014 demonstrated that there were other breaches of ***Article 3*** apart from overcrowding.

32. **Trebuian:** Mr Simon Gledhill, on behalf of Trebuian, adopted the submissions of Mr Josse and Mr Stansfeld. Mr Gledhill submitted that the minimum personal space that had to be available to a prisoner excluded that occupied by a bed and other furniture. In this regard he drew our attention to a Memorandum dated 10 May 2011, prepared by the Council of Europe's department for the execution of judgments and decisions of the ECtHR in the "Group of 23 Cases Bragadireanu (and others) against Romania" concerning conditions of detention in prisons and police detention facilities. Paragraph 40 of the Memorandum stated that "a living space of 12.83 square metres for three detainees, but equipped with four beds suggested a living space below the acceptable minimum threshold". However, the paragraph does not indicate whether the same space with just three beds would be compliant. The same department prepared a Memorandum in the same group of cases a year later and made the point, at paragraph 102, that a cell of 15.20 square metres occupied by 8 detainees suggested "a living space below the acceptable minimum threshold and even below

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been required to order the person's discharge."

the national applicable standards". That paragraph also referred to [60] of the judgment of the ECtHR in ***Iamandi v Romania (No 25867/03, 1 June 2010***), which states that "it should be taken into account that [the living space] is really further reduced by the presence of furniture which narrowed the cells".

33. Mr Gledhill accepted that no expert evidence had been submitted on behalf of Trebuian either before the DJ or on appeal. However, he submitted that such expert evidence was not essential and that this court should examine the underlying factual material before it and apply it to Trebuian's case. Mr Gledhill also accepted that, at present, he could not say in which prison Trebuian would serve his sentence.

34. **The Romanian Judicial Authorities:** Mr Mark Summers QC, on behalf of the Romanian JAs, accepted that in the case of Blaj there was evidence that if he were to be sent to a closed prison it would be Oradea and if he were to be sent to an open prison it would be Satu Mare. Because Blaj's sentence was one of three years, Mr Summers accepted that there was a "real risk" that Blaj could be sent to the semi-open prison of Satu Mare and so he conceded that, in Blaj's case, the ***Article 3*** "threshold" was crossed. In the case of Roman, Mr Summers accepted that, for a 5 year sentence, it was likely Roman would start his sentence in a closed prison, probably at either Colibasi or Craiova prison and he accepted that there were specific problems of overcrowding there. Hence the concession that the ***Article 3*** "threshold" was passed in his case also. In the case of Trebuian, Mr Summers submitted that he was likely to go to a closed prison in the first place (because he had received a 6 year sentence). There was no evidence as to which prison he would be sent. Therefore, in his case, Trebuian had to demonstrate that there was a systemic problem on overcrowding in closed prisons generally, because he could not point to specific problems in a specific prison where he was likely to be detained. However, in ***Florea 2*** Blake J had held, after a review of all the materials before him, that there was no current evidence of a systemic failure to meet the national standard of a minimum of 4 square metres for prisoners serving in closed conditions: see [19]. Trebuian had adduced no evidence (either before the DSDJ or on appeal) that challenged that conclusion, so that in his case the ***Article 3*** threshold was not crossed.

35. Mr Summers submitted that this court should follow ***Florea 1*** unless it was demonstrably wrong in law. He noted that the case was not certified as fit for the Supreme Court and that the ECtHR had declined to give Mr Florea any temporary stay on extradition under Rule 39 of its procedural rules. Mr Summers submitted that there was no "Strasbourg bright line" that all prisoners must have at least 3 square metres of personal space. He noted particularly the comment of the ECtHR in ***Trepashkin v Russia (No 1)*** (application No 36898/03; judgment 19 July 2007) at [92] that the ECtHR "…cannot decide once and for all how much personal space should be allocated to a detainee in terms of the Convention", because it depended on a number of variable factors. That approach was reflected in the Divisional Court's judgment in ***Achmant v Judicial Authority in Thessaloniki, Greece [2012] EWHC 3470*** at [27] and [30]. There was no ECtHR case which stipulated that the space occupied by furniture had to be deducted so as to arrive at a *net* figure.

36. Mr Summers submitted that the assurance of 26 February 2015 was "***Othman*** compliant" in all necessary respects and the Romanian JAs should be permitted to rely on it. It would not be revoked capriciously; to do so would have severe

diplomatic consequences and would be contrary to the rule of good faith and mutual trust which underlay the Council Framework Decision on the EAW.

Discussion and conclusions on the *Article 3*/prison conditions ground.

37. The question the court has to answer is: are there substantial grounds for believing that if each of the appellants is extradited to Romania, there is a real risk that he will suffer inhuman or degrading treatment or punishment by virtue of overcrowding in one or more Romanian prisons? The strong presumption in the case of a Member State of the EU is that there will be no such risk. However, in respect of Blaj and Roman, the Romanian JAs accept that, but for an assurance from the Romanian authorities, the answer to that question is "yes". That is because, in the case of Blaj, if he were to go to a closed regime prison, it is likely to be Oradea, which is "***Article 3*** compliant" at present, but if he goes to a semi-open regime prison, it is likely to be Satu Mare which generally falls below a "2 square metre threshold". In the case of Roman he would be in a closed prison, at least for a major part of his sentence and the most likely are Colibasi and Craiova and it is accepted that these prisons generally offer less than 3 square metres of personal space.

38. Therefore, in the case of Blaj and Roman, the primary question is, assuming that the Romanian JAs can rely on it, whether the assurance of 26 February 2015 will "dispel any doubts" (***Saadi v Italy (2009) 49 EHRR*** at [30]) that Romania would abide by its ***Article 3*** obligations in relation to prison conditions. There can be no doubt that a suitably worded assurance from the competent national authority of a Member State of the EU can be sufficient to dispel [any] such doubts, if it is "***Othman*** compliant", to use a short-hand: see ***Ilia v Greece [2015] EWHC 547 (Admin)*** at [39]-[40] in particular. Although counsel for the appellants made submissions on the revocable nature of the assurance and the issue of whether the assurance could be monitored satisfactorily, those were not the major focus of objection. The critical complaint was that, even if the assurance were to be fulfilled, it would not meet ECtHR minimum standards for personal space of detainees in prisons, which, it is said, now amounts to 3 square metres, *exclusive* of furniture such as beds, or, as a fall-back argument, 2 square metres *exclusive* of furniture such as beds in the case of detention in a semi-open prison. We will deal with the issue of whether there is and, if so, what is the minimum *net* space requirement for prisoners in closed or semi-closed conditions.

39. In our view the ECtHR has been careful not to be prescriptive. In ***Ananyev,*** (judgment made final on 10 April 2012), the First Section of the ECtHR was very careful in formulating its propositions at [148]. It stated that the court "had to have regard" to three particular elements. The second of those is that "each detainee must dispose of at least three square metres of floor space" and the third is that "the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items". The Court then said that the "absence of any one of those elements creates in itself a strong presumption that the conditions of detention amount to degrading treatment" and are in breach of ***Article 3.*** There is a "strong presumption" but not necessarily a finding that it is so.

40. If the wording of the three elements is examined carefully it is clear that the reference to "must dispose of at least three square metres of floor space" does not mean that a detainee must have three square metres of floor space in which to be able to move

around and have space for his own bed as well. If it did there would be no need for the third element, which deals with the need to have space between items of furniture in a multi-occupancy cell. That element is there to deal with the situation recorded in the previous paragraph of the judgment, viz. that there were some cells where beds and furniture meant that the remaining floor space "was hardly sufficient even to pace out the cell".

41. Has the ECtHR case law advanced since ***Ananyev?*** In the Second Section's "pilot judgment" concerning prison conditions in Italy, ***Torreggiani and others v Italy*** (judgment 8 January 2013), the court noted, at [57], that the complaint of prisoners was that they had "…personal space of just 3 square metres. Such an area, already insufficient, was also further limited by the presence of the furniture in the cells". That comment reflects the complaint. The court notes this again at [75]. In [76] the court said that the "norm" for habitable space in "collective cells" (ie multi-occupancy cells) is four square metres. That does not take the matter further.

42. In its judgment in ***Neshkov and others v Bulgaria*** (judgment given on 27 January 2015), the Fourth Section of the ECtHR reiterates the general proposition that "if inmates have at their disposal less than three square metres of living space, overcrowding must be considered so severe as to lead in itself, regardless of other factors, to a breach of ***Article 3…***". The paragraph continues: "In the assessment of the amount of available space, account must be taken of the space occupied by furniture and fixtures in the cell". In [232] the court simply repeats the "three elements" test set out at [148] of ***Ananyev*** without any further elaboration or explanation.

43. In our view the law as stated by the ECtHR with regard to breaches of ***Article 3*** by reason of prison overcrowding *in closed prison conditions* remains the same as stated in ***Ananyev.*** In summary it is: where a prisoner is in a multi-occupancy cell he must "dispose of" at least three square metres of floor space and the cell must be such that prisoners can move freely between items of furniture. If one or other of those elements is absent, then there is a strong presumption of a breach of ***Article 3.*** There is no requirement that a prisoner will have 3 square metres of floor space available to him *net* of his bed and furniture.

44. As Trebuian has not demonstrated that he would be sent to a particular closed prison that fails to meet these standards, his appeal on the ***Article 3*** ground must be dismissed. Because Roman has demonstrated that it is likely that he would go to one of two closed prisons where there is a substantial ground for believing that these standards will not be fulfilled, it is necessary to consider the terms of the 26 February 2015 assurance. In the case of Blaj, however, because it is likely that he would go to a semi-open prison (either straight away or after a short time), it is also necessary to see whether the provision of a minimum of 2 square metres of personal space would be an infringement of his ***Article 3*** rights.

45. The national law of Romania (Ministry of Justice Order no 433/C/2010) stipulates that the minimum space required for a semi-open prison is 6 cubic metres, which corresponds to approximately 2 square metres of floor space: ***Florea 1*** at [7]. That national law requirement has not been criticised in any decision of the ECtHR in relation to Romanian prison conditions as amounting to an automatic breach of a detainee's ***Article 3*** rights, as this court noted in ***Florea 1*** at [38]. We think that the

reason for that must be that when considering whether there has been a breach of ***Article 3*** in prison overcrowding cases, the ECtHR's approach is not simply to consider the amount of personal floor space available to a prisoner, but other factors as well. This was emphasised in ***Trepashkin*** at [92]:

> "The court cannot decide, once and for all, how much personal space should be allocated to a detainee in terms of the Convention. That depends on may relevant factors, such as the duration of the detention in particular conditions, the possibilities of outdoor exercise, the physical and mental condition of the detainee and so on. That is why, whereas the court may take into account general standards in this area developed by other international institutions such as the CPT[2]…these cannot constitute a decisive argument".

46. At [27 (vi)] of ***Florea 1,*** this court noted that neither the case law of the ECtHR nor the report prepared for the Committee of Ministers in May 2012 (on the ***Bragadireanu v Romania*** cases) indicated that personal space of less than 3 square metres was acceptable where there is greater time spent out of the cell, as would be the case in a semi-open regime. But the fact remains that the ECtHR has not condemned the Romanian national law setting the minimum at 2 square metres in the case of semi-open regime prisons, despite the many Romanian prison cases that have come before it. In our view, that is a decisive argument.

47. If that is so, then would the fact that the 2 square metres of personal space is a *gross* figure, not one *net* of bed and furniture, provide substantial grounds for believing that there is a real risk that a person extradited to face those conditions in a Romanian semi-open prison would suffer a breach of his ***Article 3*** rights? We have concluded that it does not. It is not in doubt that in semi-open conditions, a Romanian detainee could expect to spend up to 12 hours outside his cell. This will ameliorate the comparatively small personal space available within the detainee's cell. The ECtHR has emphasised that the position has to be considered overall when deciding whether or not there is a breach of ***Article 3*** by reason of overcrowding.

48. The consequence of these conclusions is that, in relation to Blaj, whether or not he would be detained in closed or semi-open conditions if extradited, the terms of the assurance of 26 February 2015, if otherwise acceptable, are ***Article 3*** compliant. In relation to Roman, on the assumption that he would be detained in closed conditions if extradited, the assurance is also ***Article 3*** compliant.

49. Is the assurance of 26 February 2015 otherwise acceptable? In our view it is. First, we are quite satisfied that it is given in good faith and will be acted upon by the Romanian authorities. Secondly, although the assurance is general in the sense that it does not identify specific prisons to which those extradited would be sent, the latest statistics we were given (for 3 March 2015) indicates that there are closed prisons where a minimum of 3 square metres can be provided and there are semi-open prisons which can provide the minimum 2 square metres. So we do not accept Mr Stansfeld's submission that the assurance simply cannot be fulfilled. Thirdly, the effect of the assurance is that all persons extradited from England and Wales will personally be accommodated with personal space in excess of the requisite minimum,

[2] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, commonly called "CPT". It regularly visits Council of Europe member states to inspect prison conditions, including the UK.

depending on the type of regime to which he is allocated, regardless of the occupancy of the prison in question. We accept that this assurance is given in good faith and there is no evidence that leads us to doubt it. Fourthly, as Blake J stated at [25] of ***Florea 2,*** there are abundant means by which this general assurance of Romania can be monitored, in addition to the presumption that an EU Member State will honour an assurance given to the court of another Member State in relation to such a sensitive matter as extradition.

50. Lastly, on the question of whether the JAs should be prevented from relying on the assurance of 26 February 2015 because it was introduced after the hearing before the DJs, in our view this assurance cannot be regarded as "fresh evidence" as such, and so is not subject to the same constraints as such evidence would be if a party attempted to introduce it on appeal to the High Court. We also accept Mr Summers' submission that this is not the same situation as in the ***Al Ashwamy*** case, where new factual evidence was sought to be introduced. The terms of the 26 February 2015 assurance are essentially the same as those given for the purposes of ***Florea II.*** The only difference is that it is given generally rather than for Mr Florea. Therefore the Romanian JAs can rely on the 26 February 2015 assurance in the cases of Blaj and Roman.

51. Accordingly, we reject the ***Article 3***/prison conditions ground of challenge.

The *Article 8* ground: Blaj and Trebuian

52. On behalf of Blaj, Mr Josse submitted that the extradition of his client would be a disproportionate interference with his and his family's rights under ***Article 8***. He lives with his parents and sister in the UK and his parents are reliant on him for financial support. He has also been in a relationship with a partner for 3 years, and has worked since coming to this country in 2007. Furthermore, Mr Josse noted, by the time of the appeal, he will have been subject to what would amount to a 'qualifying curfew' in this jurisdiction of 15½ months, which is the equivalent to nearly 8 months of a sentence under English sentencing law.

53. On behalf of Trebuian, Mr Gledhill submitted that his client is a widower with children aged 10 and 12. The children live in Romania with his parents, and go to boarding school for which he pays. Their education relies on his ability to work in the UK and remit funds to Romania. His parents are too old to work and they too rely on his income for support. He has lived and worked in this country since 2008.

54. On behalf of each appellant it was submitted that the weight of family and personal circumstances outweighs the public interest in extradition. On the other side of the balance are the nature of the offences and the public interest in the UK complying with its international obligations established by the Framework Decision of 2002. In the case of Blaj, his extradition is sought to serve a 3-year sentence for a serious offence which caused death. Having lied to the police, he deliberately absented himself from his trial. He is a fugitive from justice. In the case of Trebuian he is sought to serve a sentence for attempted murder. He was present for his trial but fled from Romania following his temporary release. He has an outstanding sentence of 6-years imprisonment still to serve. He too is a fugitive from justice.

55. The general principles in relation to the application of ***Article 8*** in the context of extradition proceedings have very recently been reconsidered by a Divisonal Court consisting of the Lord Chief Justice, Ryder LJ and Ouseley J in ***Polish Judicial Authorities v Adam Celinski and others [2015] EWHC 1274 (Admin),*** a decision which was handed down on 6 May 2015. The judgment of the court, given by the Lord Chief Justice, reviewed ***Norris v Government of the USA (No 2) [2010] 2 AC 487*** and ***HH v Deputy Prosecutor of the Italian Republic, Genoa [2013] 1 AC 338.*** The judgment emphasised a number of points which are of particular relevance to the present cases. First, the judgments of the Supreme Court in ***HH*** must be read against the fact that those were all cases which involved the interests of children. Secondly, the public interest in ensuring that extradition arrangements be honoured is very high. Thirdly, in ***Part 1*** cases, which are necessarily based on the Framework Decision of 2002, the principle of mutual confidence and respect which underpins it must be recognised and acted upon. Fourthly, in "conviction" EAW cases, the UK court should be careful not to try and second guess either the policy or the decision on sentencing of the requesting state. Fifthly, the District Judge must take a "structured" approach to balancing the factors to be considered in an ***Article 8*** case, balancing the "pros" and "cons". Lastly, on appeal in ***Article 8*** cases there is a single question to be answered: did the District Judge make the wrong decision, applying the approach of Lord Neuberger in ***In re B (a child) [2013] UKSC 33*** at [93]. The appellate court must focus on the outcome of the District Judge's approach. The question is: was that outcome wrong or not.

56. In our judgment the decision of DJ Coleman in the case of Blaj cannot possibly be described as "wrong". The DJ carried out a balancing exercise and weighed up the "pros" and "cons" carefully, taking all relevant factors into account. The only factor that was pressed before us but (apparently) not before DJ Coleman was the fact that Blaj has been the subject of a curfew as a part of his bail conditions. In our judgment this cannot swing the balance against extradition. Blaj was a fugitive from justice in Romania; it is small wonder he was made subject to restrictive conditions of bail. Whether that should count in his favour in serving his sentence in Romania is properly a matter for the authorities of the requesting state to decide.

57. In the case of Trebuian, where the only issue raised before the DSDJ was the ***Article 8*** ground, the DJ also did the necessary balancing exercise. In his case too it cannot possibly be argued that the DSDJ's ***Article 8*** decision was "wrong".

58. Accordingly, we dismiss the ***Article 8*** ground of both Blaj and Trebuian.

Disposal of the appeals

59. For these reasons, we dismiss all three appeals.