



JUDICIARY OF
ENGLAND AND WALES

District Judge [REDACTED]

In the Westminster Magistrates' Court

Between:

GALATI LAW COURT, ROMANIA

Requesting Judicial Authority

-v-

[REDACTED] B [REDACTED]

Requested Person

APPLICATION

1. This is an application made by the Galati Law Court in Romania. The judicial authority is represented by Ms. [REDACTED].
2. Romania is a Category 1 territory for the purposes of the Extradition Act (EA) 2003.
3. The requested person is [REDACTED]. He was born in Tulcea, Romania on [REDACTED]. He is 40 years old. He is represented by Mr. [REDACTED].

EAW – Ref: [REDACTED]

4. A European Arrest Warrant (EAW) was issued by the judicial authority on 27th March 2014 and certified by the National Crime Agency in the United Kingdom on 9th December 2015.

5. The EAW is a conviction warrant. It relates to two offences. They are described as (i) formation of a criminal organisation; and (ii) swindling. The warrant details that during November 2009, Mr. B█████ joined a criminal organisation formed by eight defendants with a view to obtaining financial benefits by swindling "with extremely serious consequences". During November and December 2009, Mr. B█████ is said to have misled and injured ten commercial companies, causing a loss of 300,721,27 lei by using fake names and capacities and issuing uncovered cheques. Mr. B█████ role is described as being to demand as many offers as possible from the representatives of the companies.
6. Despite the heading to box (e) explicitly reminding the judicial authority that they must include "*Description of the circumstances in which the offence(s) was (were) committed, including the time, place, and degree of participation in the offence(s) by the requested person*" there are no explicit details contained on the warrant as to the location of the offences concerned.
7. A penal sentence rendered by the Galati Law Court on 20th September 2013 became final by a decision of the Galati Court of Appeal on 14th March 2014. A sentence of 4 years and 6 months imprisonment (plus an additional sentence of denying certain rights) was imposed, all of which remains to be served.
8. The warrant states that Mr. B█████ was present in person at the hearing which led to the rendered judgment.
9. The European Framework list is certified on the warrant at (i) participation in a criminal organisation; and (ii) swindling.

ISSUES RAISED

10. At a directions hearing on 2nd December 2016, Mr. ██████ indicated that he would only be making an argument to do with section 2 of the EA 2003.
11. In a statement of issues prepared on 16th February 2016, Mr. ██████ has pursued an argument concerned with section 2(6)(b) and sections 10 and 65.

HISTORY OF PROCEEDINGS

12. Mr. B [REDACTED] was arrested in this country on 9th December 2015 at Harwich International Port, having arrived driving a freight lorry.
13. Mr. B [REDACTED] first appeared at Westminster Magistrates' Court on 10th December 2015.
14. The hearing against Mr. B [REDACTED] was formally opened on 29th January 2016.
15. On 2nd February 2016, Mr. B [REDACTED] appeared for a directions hearing. The matter was set down for hearing on 17th February 2016.
16. On 9th February 2016, Mr. B [REDACTED] appeared for a bail application. No application was made.
17. The final hearing in this matter took place on 17th February 2016. Mr. B [REDACTED] did not attend. A form from HMP Wandsworth confirmed that Mr. B [REDACTED] had declined to attend. He had signed the form. Though his reasons for not attending were illegible, I determined that he would have been warned on previous occasions about the consequences of any failure to attend future hearings. I determined that it was appropriate to continue with the hearing. I note that section 11 of the Magistrates' Courts Act 1980 provides a presumption that the court will proceed in the absence of an adult defendant unless it would be contrary to the interests of justice.
18. Mr. B [REDACTED] has been in custody throughout proceedings.

THE EVIDENCE/FINDINGS OF FACTS

19. No evidence was put before me.

GROUNDNS FOR CHALLENGE

Section 2 – Warrant and certificate

Law

20. Section 2 of the EA 2003 provides:

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).
- (3) The statement is one that –
 - (a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, 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 prosecuted for the offence.
- (4) The information is –
 - (a) particulars of the person's identity;
 - (b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;
 - (c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an 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 is convicted of it.
- (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.
- (7) The designated authority may issue a certificate under this section if it believes that the authority which issued the Part 1 warrant has the function of issuing arrest warrants in the category 1 territory.
- (7A) But in the case of a Part 1 warrant containing the statement referred to in subsection (3), the designated authority must not issue a certificate under this section if it is clear to the designated authority that a judge proceeding under section 21A would be required to order the person's discharge on the basis that extradition would be

disproportionate.

In deciding that question, the designated authority must apply any general guidance issued for the purposes of this subsection.

- (7B) Any guidance under subsection (7A) may be revised, withdrawn or replaced.
- (7C) The function of issuing guidance under subsection (7A), or of revising, withdrawing or replacing any such guidance, is exercisable by the Lord Chief Justice of England and Wales with the concurrence of –
 - (a) the Lord Justice General of Scotland, and
 - (b) the Lord Chief Justice of Northern Ireland.
- (8) A certificate under this section must certify that the authority which issued the part 1 warrant has the function of issuing arrest warrants in the category 1 territory.
- (9) The designated authority is the authority designated for the purposes of this Part by order made by the Secretary of State.
- (10) An order made under subsection (9) may –
 - (a) designate more than one authority;
 - (b) designate different authorities for different parts of the United Kingdom.

21. The requirements of section 2 are strict. Those who are subject to extradition under a warrant “*are entitled to expect the court to see that the procedures are adhered to according to the requirement laid down in the statute.*” (*The Office of the King’s Prosecutor, Brussels v Cando Armas and Another* [2005] UKHL 67).

22. Article 8 of the Framework Decision provides:

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:
 - (a) the identity and nationality of the requested person;
 - (b) the name, address, telephone and fax numbers and email address of the issuing judicial authority;
 - (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
 - (d) the nature and legal classification of the offence, particularly in respect of Article 2;
 - (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
 - (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
 - (g) if possible, other consequences of the offence.
2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

23. In *The Office of the King’s Prosecutor, Brussels v Cando Armas and Another* [2005] UKHL 67, Lord Bingham observed:

“[8] Part 1 of the 2003 Act did not effect a simple or straightforward transposition, and it did not on the whole use the language of the Framework Decision. But its interpretation must be approached on the twin assumptions that Parliament did not intend the provisions of Part 1 to be inconsistent with the Framework Decision and that, while Parliament might properly provide for a greater measure of cooperation by the United Kingdom than the Decision required, it did not intend to provide for less.”

24. In *Sandi v The Craiova Court, Romania* [2009] EWHC 3079 (Admin), the Divisional Court was concerned with a requested person arrested on a conviction warrant (having been found guilty at trial in Romania in his absence). The court was therefore concerned with the provisions of section 2(6) of the EA 2003. Hickinbottom J, giving the judgment of the court, observed:

"[16] Although there is some considerable overlap, the requirements for a Part 1 warrant issued in circumstances where the subject is accused in the territory seeking extradition (set out in section 2(3) and (4)) are not the same as those where the warrant is issued in respect of a person who has been convicted (which requirements are set out in section 2(5) and (6))."

25. Hickinbottom then went on to set out what he considered to be the correct approach to the requirement of section 2(6)(b) ("particulars of the conviction"):

"[24] If a warrant fails to comply with section 2, it is void *ab initio* [*Dabas* at [50] per Lord Hope). Although in this case further information has been obtained from the requesting judicial authority, the District Judge was right to ignore it...She was bound to do so.

"[25] Although they have to be construed in the light of the Framework Decision, the starting point for the requirements of a conviction warrant must be the terms of the statutory provisions in section 2 of the 2003 Act...Mr. Smith submitted that both section 2(4)(c) and section 2(6)(b) required the same level of information about the underlying conduct, because both use the term "particulars". I do not agree. In those respective provisions, that term governs entirely different things: in section 2(4)(c) it governs the circumstances in which the person is alleged to have committed the offence, whilst in section 2(6)(b) it governs the conviction. As a matter of plain English, the phrase "particulars of the conviction" does not necessarily require the same level of detail in respect of the underlying charges imported by the words of section 2(4)(c).

"[26] In section 2, in respect of information to be included, there is a patent dichotomy between the requirements for an accusation warrant on the one hand, and a conviction warrant on the other...It must be taken that Parliament intended the information as to the circumstances of the underlying offence required in an accusation warrant to be different from that required in a conviction warrant. It cannot have been their intention to have the requirements of section 2(4)(c) read across into section 2(6)(b)...

"[27] In seeking a rational basis for that distinction, one needs to consider the purposes of each type of warrant.

"[28] An accusation warrant seeks to extradite a person so that he can face a criminal charge within the state seeking extradition: therefore...it derives its legal characteristics from the alleged conduct which founds that charge in the state seeking extradition...[T]he terminology of section 2(4)(c)...therefore understandably requires more than a general indication of the alleged criminal conduct...A significant level of particularisation is required to enable the person sought to be extradited to identify exactly what he might face at trial.

"[29] A conviction warrant on the other hand seeks to extradite a person to face the appropriate consequences of his conviction: therefore, it derives its legal characteristics from the conviction. The trial has already taken place and, following conviction, a considerable number of matters which are unknown at the accusation

stage are no longer uncertain. For example, the basis and even the evidence upon which the conviction was found are known and fixed. It is therefore understandable that, as section 2(6)(b) requires, the warrant must inform the person sought to be extradited of the details of the relevant conviction.

"[30] Those details must of course include, for example, the court and date of the conviction...The question is this: in a conviction case, what is the required level of detail of the circumstances of the underlying offences?"

"[31] The requirements for particularisation must be placed in the context of the legislative scheme designed to eliminate undue complexity...The requirement must not be unduly onerous on the requesting authority..."

"[33] The appropriate level of particularity will depend upon the circumstances of each case..."

"[34] However, adopting a purposive approach, in a conviction warrant case, the requested person will need to have sufficient details of the circumstances of the underlying offences to enable him sensibly to understand what he has been convicted of and sentenced for – and to enable him to consider whether any bars to extradition might apply. In light of that, and having regard to Article 8(1) of the Framework Directive, I consider that it will almost always be necessary for a conviction warrant to contain the number of offences for which the requested person has been convicted and some information about when and where the offences were committed, and the requested person's participation in them, although not necessarily in the same level of detail as would be required in an accusation warrant. Furthermore, common sense dictates that it is likely that more particulars will be appropriate in more complex crimes such as fraud than in crimes such as simple theft. However, there is no formula for appropriate particularisation. Each case will depend upon its own facts and circumstances."

26. In *King v Public Prosecutors of Villefranche Sur Caone, France* [2015] EWHC 3670 (Admin), the Divisional Court stated:

"[16] Since the object of the EAW process is to remove the complexity and potential for delay and the system is built on the mutual trust between the states which are party to the Framework Decision, I am far from persuaded that there is a need for full and exhaustive description. But sufficient circumstances must be set out in order for there to be compliance with Article 8 to enable the requested state and the requested person to be able to ensure that any barriers to extradition, whether compulsory or optional, do or do not apply and can be relied on. In principle there is no material difference between what is required in an accusation or conviction case..."

"[18] While I recognise the force of this reasoning [in paragraphs 25 and 26 of *Sandi v Romania*], I do not think that it is compliant with the approach which Article 8 of the Framework Decision requires. The obligation in section 2(4)(c) to give "particulars of the circumstances in which the person is alleged to have committed the offences" is tautologous and adds nothing to the requirement to give a description of "the circumstances in which the offence was committed" (Article 8(1)(e)). The only distinction between accusation and conviction is that the circumstances are alleged in an accusation case but established in a conviction case. 'Particulars of conviction' are not necessarily limited since time, place and degree of participation are needed in order for there to be compliance with Article 8. I do not believe that the use of the word 'particulars' in s.2(4)(c) adds anything to the Article 8(1)(e) test and in s.2(6)(b) 'particulars' must extend beyond a mere recital of the conviction. What is needed in all cases is sufficient information to enable any mandatory or optional bar contained in Article 3 and 4 of the Framework Decision to be considered whether by the authority in the executing state or the requested person."

Analysis

27. Mr. [REDACTED], on behalf of Mr. B. [REDACTED], submits that the warrant must contain particulars of the location in which the offence is said to have been committed for it to satisfy section 2 of the EA 2003. He submits that this warrant does not contain any particulars of the location of where these two offences took place. He submits that the warrant is therefore not a valid Part 1 warrant.
28. Ms. [REDACTED], on behalf of the judicial authority, concedes that the warrant does not contain particulars of the location of these offences. She suggests that the court would be in difficulties being satisfied to the criminal standard that the warrant is a valid warrant. She observes that common sense suggests that the conduct "probably" occurred in Romania. She was also concerned that Mr. B. [REDACTED]'s role was described as "*he gathered their addresses especially by means of their advertisements from the Internet*" which might suggest he could have acted anywhere in the world.
29. I made observations that a number of the injured victim companies had "Bucharest" in their names, from which it could be inferred that they were located (at least in part) in Romania. I also noted that, whether or not Mr. B. [REDACTED] carried out activities outside Romania might not matter as the first offence alleged was participation in a criminal organisation which would include the activities of others not just Mr. B. [REDACTED]. Ms. [REDACTED] did not attempt to seize on these observations in support of the judicial authority's position. She was no doubt right not to do so.
30. I agree with Mr. [REDACTED]'s submission on this matter. The warrant fails to specify the place of participation in the offence by the requested person. As such, it clearly does not comply with Article 8(1)(e) of the Framework Decision. As has been made clear in *Brussels v Cando Armas*, I must interpret section 2 so that it is not inconsistent with Article 8. As is made clear in *King v France*, there must be sufficient circumstances in the description of the offence(s) to enable both sides to be able to consider barriers to extradition. The Divisional Court makes it clear that "particulars of conviction" include a requirement as to place of participation. Though I might make some common sense inferences as to the place in which the relevant conduct occurred,

guesswork by this court is not what is required. Section 2 requires particulars. Sufficient particulars have not been provided. This is not, in my judgment, a valid Part 1 warrant.

Section 10 – Extradition offence

Law

31. Section 10 of the EA 2003 provides: (as amended by The Extradition Act 2003 (Multiple Offences) Order 2003:

10. Initial stage of extradition hearing

- (1) This section applies if a person in respect of whom a Part 1 warrant is issued appears or is brought before the appropriate judge for the extradition hearing.
- (2) The judge must decide whether any of the offences specified in the Part 1 warrant is an extradition offence.
- (3) If the judge decides the question in subsection (2) in the negative in relation to an offence he must order the person's discharge in relation to that offence only.
- (4) If the judge decides that question in the affirmative in relation to one or more offences, he must proceed under section 11.

32. Section 65 of the EA 2003 provides:

65. Extradition offences: person sentenced for offence

- (1) This section sets out whether a person's conduct constitutes an 'extradition offence' for the purposes of this Part in a case where the person –
 - (a) has been convicted in a category 1 territory of an offence constituted by the conduct, and
 - (b) has been sentenced for the offence.
- (2) The conduct constitutes an extradition offence in relation to the category 1 territory if the conditions in subsection (3), (4) or (5) are satisfied.
- (3) The conditions in this subsection are that –
 - (a) the conduct occurs in the category 1 territory;
 - (b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.
- (4) The conditions in this subsection are that –
 - (a) the conduct occurs outside the category 1 territory;
 - (b) in corresponding circumstances equivalent conduct would constitute an extra-territorial offence under the law of the relevant part of the United Kingdom;
 - (c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.
- (5) The conditions in this subsection are that –
 - (a) the conduct occurs in the category 1 territory;
 - (b) no part of the conduct occurs in the United Kingdom;
 - (c) a certificate issued by an appropriate authority of the category 1 territory shows that the conduct falls within the European framework list;
 - (d) the certificate shows that a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed on the category 1 territory in respect of the conduct.

- (6) For the purposes of subsections (3)(b) and (4)(b) –
- (a) if the conduct relates to a tax or duty, it does not matter whether the law of the relevant part of the United Kingdom imposes the same kind of tax or duty or contains rules of the same kind as those of the law of the category 1 territory;
 - (b) if the conduct relates to customs or exchange, it does not matter whether the law of the relevant part of the United Kingdom contains rules of the same kind as those of the law of the category 1 territory.

33. The requirement in section 65(3)(a) [and by implication section 65(5)(a)] that “the conduct occurs in the category 1 territory” does not mean that all the conduct complained of should have occurred in the category 1 territory. It is enough that some of the conduct complained of or relied on occurred in that territory (*Office of the King’s Prosecutor, Brussels v Cando Armas* [2006] 2 AC 1). Furthermore, offences within the European framework list may also be examined under sections 65(3) and 65(4) if, for example, some of the conduct occurred in the UK (*Armas*). It has been observed that many of the offences in the framework list are commonly committed across borders.

34. The test of whether conduct occurs in the category 1 territory is satisfied for the purposes of section 65(3) [and by implication section 65(5)] so long as its effects were intentionally felt there, irrespective of where the person was when he did the acts which constituted such conduct (*Office of the King’s Prosecutor, Brussels v Cando Armas* [2006] 2 AC 1). It is well established that the physical presence of the defendant in the territory is now not required.

Analysis

35. Mr. [REDACTED] further submits that the failure to provide details of the location of the conduct is essential in part because it is fundamental to determining whether the offences are extradition offences. He observes that, under section 65(5), the conduct must have taken place in the Category 1 territory and not in the United Kingdom. He submits that, without details as to the location of the conduct, the court cannot be satisfied which provision under section 65 is met and cannot therefore be satisfied that the offences are extradition offences pursuant to section 10 of the Act.

36. In my judgement, the submissions made on behalf of Mr. B [REDACTED] would not necessarily succeed on this ground. As I observed, there are clear inferences to be drawn that some of the conduct occurred and was felt by companies in Bucharest and other Romanian locations. The authorities suggest that this might be sufficient to satisfy section 65(5)(a). Even if I could not be sure that some of the conduct did not occur in the UK, I might have been able to consider these offences under section 65(3).

37. In the end, however, because of my decision on section 2, I do not consider that I need to make a determination on section 10.

ORDERS

38. I therefore determine that this warrant is invalid as a Part 1 warrant. I therefore order Mr. B [REDACTED] to be discharged.



DISTRICT JUDGE (MAGISTRATES' COURTS)
APPROPRIATE JUDGE (s.67(1)(a)/139(1)(a) of the Extradition Act 2003)

17th February 2016

Henrik Stagetorn

Fra: IJO003@politi.dk
Sendt: 28. februar 2017 13:15
Til: Henrik Stagetorn
Emne: ~~Henrik Stagetorn~~

Hej Henrik Stagetorn

Jeg har i dag talt med pa. Lilian Christensen sirekekontoret (Rigspolitiet) som oplyser: at sirenekontoret den 250216 fra Rumænien har modtaget en haste meddelelse, om at eftersøgte A [redacted], var kørende i en lastbil med et kendt registreringsnummer fra Tyskland til Esbjerg, hvor firmaet R [redacted] har en garage. Der er information om, at A [redacted] derfra vil køre til Jønkbøbing i Sverige for at besøge sin kæreste. Det fremgår at A [redacted] har været efterlyst i SIS siden den 040414.

Denne meddelelse er sendt til Tyskland, Danmark og Sverige

Meddelsen sendes videre fra Sirenekontoret til UKA, Syd og Sønderjyllandspoliti.

Undertegnede kontaktede K [redacted] som oplyste, at han var bekendt med at hans tidligere chauffør A [redacted] havde været anholdt i England. Dagen efter A [redacted] løsladelse blev han kontaktet af A [redacted] gamle firma R [redacted], Galati Rumænien, som spurgte om A [redacted], som stod på gaden i England, måtte køre med hjem i en af fa. R [redacted]s lastbiler, dette havde Kim intet imod, da det var fa. R [redacted]s lastbil. Senere blev K [redacted] kontaktet af politiet ang. A [redacted] hvor han tog kontakt til R [redacted] og her fik oplyst, at den lastbil, som havde taget A [redacted] op at køre i England, nu befandt sig ved Slagelse, hvilket politiet fik oplyst.

hilsen

Inge Jørgensen
Politiassistent

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POLITI



New opinion on prison conditions to be obtained in extradition procedure

24-02-2017

Case no. 267/2016

Order made on 24 February 2017

The Prosecution Service
vs.
T

The Prosecution Service to obtain a new opinion on the prison conditions in Romania before the Supreme Court's final decision on a request for extradition for enforcement of sentence in Romania

In connection with the hearing of a request from the Romanian authorities for the extradition of T1 for enforcement of his sentence in Romania based on a European arrest warrant, it was brought into question whether this would be in violation of the Danish Extradition Act and the European Human Rights Convention. The defendant pleaded that the conditions in Romanian prisons did not live up to the provision in the Human Rights Convention stating that no one must be subjected to inhuman or degrading treatment.

During the High Court's hearing of the case, the Prosecution Service obtained an opinion from the Romanian authorities on Romanian prison conditions. Based on a judgment delivered by the European Court of Human Rights in October 2016, in which the Court clarified its practice regarding the conditions of space in prisons, the Supreme Court held that a new opinion was to be obtained from the Romanian authorities on the conditions under which T1 would be placed if he was extradited.

The case was thus stayed while the Prosecution Service obtained a new opinion from the Romanian authorities.

• Tilbage

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Extradition decision set aside

31-05-2017

Case no. 267/2016

Order made on 31 May 2017

The Prosecution Service
vs.
T

The Danish Ministry of Justice's decision on extradition for enforcement Romania set aside for not meeting the conditions of the Extradition Act

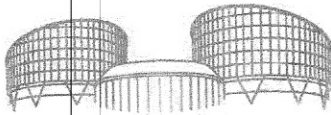
In a case on the hearing of a request from the Romanian authorities for the extradition of T for enforcement in Romania on the basis of a European arrest warrant, the Supreme Court ruled on 24 February 2017 that a new opinion should be obtained from the Romanian authorities on the conditions under which T would be held in Romania. This new opinion had now been received.

The Romanian authorities stated that T would be guaranteed a personal space of at least 3 sq. m. in a multi-person cell when serving his prison sentence in a maximum-security prison. However, if the sentence was to be served in a medium-security prison, he would only be guaranteed a personal space of 2 sq. m. The Supreme Court considered that the information on the prison conditions under which T would be held if he was extradited to a maximum-security prison did not provide grounds for establishing that there was a real risk that he would be subjected to inhuman or degrading treatment in contravention of Article 3 of the European Human Rights Convention.

Based on the information provided by the Romanian authorities, the Supreme Court considered it highly probable that T would serve a part of his prison sentence in a medium-security prison, where he was only guaranteed a personal space of 2 sq. m. Against this background, the Supreme Court ruled that there was a real risk that he would serve some of his prison sentence imposed in Romania in conditions that would be in contravention of Article 3 of the European Human Rights Convention as interpreted and applied by the European Court of Human Rights in its judgment of 20 October 2016. Extraditing T would thus be in contravention of Section 10h (2) of the Danish Extradition Act, and the Ministry of Justice's decision on his extradition for enforcement in Romania was set aside for not complying with this provision.

The High Court had reached a different conclusion.

« Tilbage



**Detention conditions in Romanian prisons are in breach of the Convention
and point to a structural deficiency requiring the adoption
of general measures by the State**

In today's Chamber judgment¹ in the case of Rezmiveş and Others v. Romania (applications nos. 61467/12, 39516/13, 48213/13 and 68191/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned the conditions of detention in Romanian prisons and in detention facilities attached to police stations.

The applicants complained, among other things, of overcrowding in their cells, inadequate sanitary facilities, lack of hygiene, poor-quality food, dilapidated equipment and the presence of rats and insects in the cells.

Under Article 3 (prohibition of inhuman or degrading treatment), the Court held in particular that the conditions of the applicants' detention, also taking into account the length of their incarceration, had subjected them to hardship going beyond the unavoidable level of suffering inherent in detention.

Under Article 46 (binding force and execution of judgments), the Court decided to apply the pilot-judgment procedure, finding that the applicants' situation was part of a general problem originating in a structural dysfunction specific to the Romanian prison system.

The Court held that the State should introduce: (1) measures to reduce overcrowding and improve the material conditions of detention; and (2) remedies (a preventive remedy and a specific compensatory remedy).

The Court decided to adjourn the examination of similar applications that had not yet been communicated to the Romanian Government and to continue its examination of applications that had already been communicated. Within six months from the date on which the judgment became final, the Romanian Government had to provide, in cooperation with the Committee of Ministers, a precise timetable for the implementation of the general measures.

Principal facts

The applicants, Daniel Arpad Rezmiveş, Marius Mavroian, Laviniu Moşmonea and Iosif Gazsi, are Romanian nationals who were born in 1970, 1966, 1976 and 1972 respectively.

Mr Rezmiveş, Mr Moşmonea and Mr Gazsi, who are currently detained in Timișoara, Pelendava and Baia Mare Prisons, and Mr Mavroian, who was detained in Focșani Prison and was released on 13 January 2015, complained in particular of overcrowding, lack of space and poor hygiene

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

conditions in their cells (presence of rats, mould on the walls, and so on), inadequate access to showers and toilets, a lack of natural light, poor ventilation, and the unsatisfactory quality of the equipment and food provided in the prisons in which they had been or were still detained.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained of the conditions of their detention in Gherla, Aiud, Oradea, Craiova, Târgu-Jiu, Pelendava, Rahova, Tulcea, Iași and Vaslui Prisons, and in the Baia Mare police detention facilities.

The applications were lodged with the European Court of Human Rights on 14 September 2012, 6 June 2013, 24 July 2013 and 15 October 2013 respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Ganna Yudkivska (Ukraine), *President*,
 Vincent A. De Gaetano (Malta),
 Nona Tsotsoria (Georgia),
 Paulo Pinto de Albuquerque (Portugal),
 Krzysztof Wojtyczek (Poland),
 Iulia Motoc (Romania),
 Marko Bošnjak (Slovenia),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

The Court noted that the personal space allocated to each of the applicants during most of their detention had been less than 3 sq. m. This severe lack of living space over the course of several months appeared to have been exacerbated by other factors, such as: the lack of natural light, the very short duration of daily walks, the unhygienic toilets which were not always partitioned off and the lack of sociocultural activities (in the case of Mr Rezmiveș); inadequate sanitary facilities and insufficient access to hot water (in the case of Mr Mavroian); poor ventilation in the cells, the presence of mould in some of the cells, the presence of insects and rats, dilapidated mattresses, poor-quality food and bedbugs (in the case of Mr Moșmonea); and poor-quality food, inadequate sanitary facilities and lack of hygiene (in the case of Mr Gazsi). The Court thus considered that although these various conditions had not in themselves amounted to inhuman and degrading treatment, they had inevitably caused the applicants additional suffering.

Furthermore, the applicants' detailed description of the material conditions in the prisons concerned was similar to the situation which the Court had found in a number of cases of this kind. The material conditions in Romanian police detention facilities had also been examined by the Court in several cases in which it had noted problems of overcrowding, substandard hygiene conditions, inadequate sanitary facilities and very limited opportunities for out-of-cell time. In addition, having regard to the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visits in 2010 and 2014 to certain prisons and police detention facilities, to the Committee of Ministers' assessment of the general measures adopted with a view to executing the *Bragadireanu* group of judgments,² to the recommendations issued by the Romanian Ombudsman following investigations into complaints by prisoners, and to

² *Bragadireanu v. Romania*, no. 22088/04, 6 December 2007.

the official statistical data concerning the Romanian prison population, the Court found that the applicants' allegations about the material conditions of their detention were credible.

Accordingly, the Court considered that the conditions of the applicants' detention, also taking into account the duration of their incarceration, had subjected them to hardship going beyond the unavoidable level of suffering inherent in detention. **It therefore held that there had been a violation of Article 3 of the Convention.**

Article 46 (binding force and execution of judgments)

The Court decided to apply the pilot-judgment procedure, finding that the applicants' situation was part of a general problem originating in a structural dysfunction specific to the Romanian prison system; this state of affairs had persisted despite having been identified by the Court in 2012 (in its judgment in *Iacov Stanciu v. Romania*, no. 35972/05, 24 July 2012).

To remedy the situation, the State had to implement two types of general measures.

Firstly, the State had to introduce measures to reduce overcrowding and improve the material conditions of detention. The Court left it to the respondent State, subject to supervision by the Committee of Ministers, to take the practical steps it deemed necessary for this purpose, specifying that where the State was unable to guarantee that each prisoner was detained in conditions compatible with Article 3 of the Convention, it was encouraged to take action to reduce the prison population.

Secondly, the State had to introduce remedies (a preventive remedy and a specific compensatory remedy). The preventive remedy had to ensure that post-sentencing judges and the courts could put an end to situations breaching Article 3 of the Convention and award compensation. The specific compensatory remedy had to ensure that appropriate compensation could be awarded for any violation of the Convention concerning inadequate living space and/or precarious material conditions.

In view of the important and urgent nature of the problem identified and the fundamental nature of the rights in question, the Court considered that a reasonable deadline for implementing the general measures was necessary, and that the Committee of Ministers was in the best position to set such a deadline. Accordingly, within six months from the date on which the judgment became final the Romanian Government had to provide, in cooperation with the Committee of Ministers, a precise timetable for the implementation of the appropriate general measures.

Lastly, the Court decided to adjourn the examination of any applications not yet communicated to the Romanian Government in which the sole or main complaint concerned overcrowding and poor detention conditions in prisons and detention facilities attached to police stations in Romania, and to continue its examination of such applications that had already been communicated.

Article 41 (just satisfaction)

The Court held that Romania was to pay the applicants Mr Rezmiveş and Mr Gazsi 3,000 euros (EUR) each and Mr Mavroian and Mr Moşmonea EUR 5,000 each in respect of non-pecuniary damage. Romania was also required to pay Mr Moşmonea EUR 1,850 in respect of costs and expenses.

Separate opinion

Judge K. Wojtyczek expressed a concurring opinion, which is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.