IN THE WESTMINSTER MAGISTRATES' COURT

BETWEEN :

BUCHAREST APPEAL COURT CRIMINAL DIVISION, ROMANIA

Requesting Judicial Authority

V

BOGDAN-ALEXANDER ADAMESCU

Requested Person

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JUDGEMENT

1. **Romania** seeks the extradition of **Bogdan-Alexander Adamescu** (`the Requested Person` / `Mr Adamescu`) to face criminal prosecution in respect of the allegations of criminal conduct set out in the European Arrest Warrant (`EAW`) upon which this request is based.

2. The details of the criminal conduct in the EAW can be summarised as follows :
Mr Adamescu is said to have conspired with his father Grigore-Dan Adamescu :
*(i) During the period **June 2013** and **December 2013** to have made corrupt payments to a Romanian Magistrate, **Stanciu Ion** (in the sums of **10,000 Euros** in **June 2013** and **5,000 Euros** in **December 2013**) in order to achieve a favourable result in respect of ongoing insolvency proceedings and*
*(ii) In **December 2013** to have made corrupt payments to another Romanian Magistrate, **Borza Monica-Angela** in the sum equivalent to **5,000 Euros** (in Romanian currency) in order to achieve a favourable decision in respect of S.C. Sigur Industrial Construct S.R.L.*

3. The Framework List of offences set out in the EAW has been ticked for **corruption**.

4. The EAW was issued on **6th June 2016** and was certified by the National Crime Agency on **9th June 2016**.

5. Mr Adamescu was born on **6th May 1978** and does not consent to extradition.

6. **Chronology of proceedings June 2016 to November 2017** :
Mr Adamescu was arrested on **13th June 2016.** He appeared at this court the following day when these proceedings were formally opened by **District Judge Margot Coleman.** Matters relating to **s.4** (preliminary issues regarding the EAW) and **s.7** (Identity) were dealt with.

7. **Lord Peter Goldsmith QC** & **Mark Summers QC**, leading **Ben Watson**, instructed by **Kingsley Napley** solicitors represented Mr Adamescu, while **Florence Iveson** appeared for the Judicial Authority.

8. At the initial hearing it was stated that the following challenges were to be raised :
(i) s.13 (Politically - motivated Prosecution)
(ii) Article 3 (Prison Conditions).
It was also indicated that an Article 6 challenge was `*being explored*`. The court was informed of an anticipated application to be made by the Nova Group B.V. (`**Nova**`) to the International Centre for the Settlement of Investment Disputes Convention (`**ICSID**`). Mr Adamescu was said to have a proprietary interest in **Nova**. Reference was made to powers available to ISCID that might affect the progress of these proceedings.

9. **District Judge Coleman** made the following Directions :
(i) Mr Adamescu`s proof of evidence be served by **11th July 2016.**
(ii) All other defence evidence be served by **12th August 2016.**
(iii) A Case Management hearing was fixed for **20th September 2016** for further Directions relating to the service of Skeleton Arguments and a comprehensive paginated court bundle.
(iv) The full hearing, with an estimate of **2 days**, was fixed for **22nd & 23rd November 2016.**

10. Notwithstanding objections raised by Romania, Mr Adamescu was granted conditional bail. The full hearing later had to be vacated by reason of voluminous documentation served by the Defence in circumstances that did not afford the Judicial Authority a reasonable opportunity to respond.

11. At some point in **2016** Mr Adamescu changed his legal representation. He was then represented by **Mr Hugo Keith QC** (`**Mr Keith QC**`), leading **Mr Ben Watson** (`**Mr Watson**`) & **Mr Aaron Watkins** (`**Mr Watkins**`), instructed by **Corker Binning**, solicitors. The Judicial Authority brought in **Mr Julian Knowles QC**, (now **Mr Justice Knowles**) (`**Mr Knowles QC**`), to lead **Mr Daniel Sternberg** (`**Mr Sternberg**`) .

12. The court retained the **22nd November 2016** as a further Case Management hearing and the full hearing was re-fixed to commence on **24th April 2017** with a **5 day** time estimate.
The following Directions were then made :
(i) The defence to file a core consolidated bundle of documents by **30th November 2016.**
(ii) The Judicial Authority to serve its evidence by **3rd February 2017.**
(iii) Any further defence evidence to be served by **3rd March 2017.**
(iv) The defence Skeleton Argument to be served by **17th March 2017.**
(v) The Judicial Authority`s Skeleton Argument to be served by **31st March 2017.**

13. At a review hearing on **3rd April 2017**, the court was again obliged to vacate the full hearing set to commence later that month for two reasons :
(a) Mr Knowles QC was required to return his brief for professional reasons, and it was agreed that it was impracticable for the Judicial Authority to be able to instruct replacement leading counsel in the short period of time that remained.
(b) Towards the end of **March 2017** Mr Adamescu`s solicitors had served the Procedural Order (No.7) pronounced in **February 2017** by ICSID. The potential implications of that Order had to be considered in detail by the parties and the court.

14. At a further review hearing of **24th April 2017,** notwithstanding objections made by the Judicial Authority, this court acceded to a defence request to hear an application for a stay of these proceedings as an Abuse of Process (by reason of the terms and effect of the ICSID Procedural Order).
That hearing took place on **26th July 2017.**

15. All other substantive challenges were adjourned to commence on **27th November 2017** with a **5 day** listing, subject (potentially) to this court`s Abuse of Process ruling. By now **Mr Tim Owen QC** (`**Mr Owen QC**`) had been retained to lead **Mr Sternberg** for the Judicial Authority.

16. On **23rd August 2017** this court released its Abuse of Process ruling refusing the defence application for a Stay. The parties were then invited to submit draft Directions in a timely fashion for the Court`s consideration in respect of the 5 day hearing that was to proceed on **27th November 2017**.

17. Mr Adamescu then again changed his legal representation and instructed **Mishcon de Reya**, solicitors to act for him.

18. As this court had not received any suggested Directions from the parties, it fixed a further case management hearing for **4th October 2017**. At that hearing Mr Watson apologised for the failure to provide proposed Directions explaining that there had been a `*hiatus*` resulting in him being without instructions for a period of time. However, the situation had resolved itself, and he was once again instructed and he was to be led by Mr Keith QC.

19. Mr Watson asked that Mishcon de Reya be afforded a reasonable opportunity to fully familiarise themselves with the voluminous case papers in order to finalise the challenges to be raised at the full extradition hearing. The Court agreed and made the following unopposed Directions :

(i) A detailed note of the challenges to be raised and any further Defence evidence to be served by **31st October 2017**.

(ii) The Defence Skeleton Argument to be served by **8th November 2017**

(iii) The Judicial Authority`s Skeleton Argument to be served by **22nd November 2017**.

20. On **18th October 2017** Mishcon de Reya filed an18 page letter which, in short, sought an adjournment of the full hearing pending the outcome of an application for **Humanitarian Protection** which they said had recently been lodged with the UK Home Office authorities on Mr Adamescu`s behalf. That was the first notice given to this court that any such an application was being contemplated.

21. On **27th October 2017**, this Court heard that application to adjourn. Mr Adamescu was represented by **Mr Hugh Southey QC** (`**Mr Southey QC**`) and the Judicial Authority by **Mr Owen QC.** After hearing lengthy arguments, the application to adjourn the full hearing was refused.

22. In the meantime, on **19th October 2017** Mishcon de Reya, lodged an application for Permission to Judicially Review this Court`s decision of **23rd August 2017** (rejecting the application for a Stay pending the conclusion of the International Arbitration Proceedings).

23. That application for Permission was refused by **Mr Justice Supperstone** on **21st December 2017.**

24. Mr Adamescu`s renewed (oral) application for permission was refused by **Lord Justice Treacy** sitting with **Mr Justice Males** on **8th February 2018** at which hearing **B-A A** was represented by **Mr Southey QC** & **Danny Friedman QC.**

25. Returning to the run-up to the retained full hearing of **November 2017**, on **31st October 2017** the Defence served a Note stating that the challenges to be raised were to be :
(i) s.13 (a) & s.13 (b)
(ii) Abuse of Process linked to both **s.13** challenges.
(iii) Article 3
(iv) Article 5
(v) Article 6

26. The Defence Skeleton Argument dated **8th November 2017** provided details of the challenges, but with no mention of any **Article 5** challenge.

27. At the commencement of the 5 day full hearing, on **27th November 2017**, Mr Keith QC stated that no **Article 5** challenge was being pursued.

28. The full hearing proceeded as planned but did not conclude as more time was needed to hear further evidence and legal argument. This is detailed later in this document.

CHALLENGES RAISED :

29. **s.13 (a) (Purposes limb)**

A person`s extradition to a category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that – (a) the Part 1 warrant issued in respect of him (though purporting to be issued on account of the extradition offence) is , in fact, issued for the purpose of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions.

30. The test to be applied was succinctly set out by Scott-Baker LJ in **Hilali v Spain (2006) EWHC 1239 (Admin)**

....."*The burden is on the Appellant to show a causal link between the issue of the warrant, his detention, prosecution, punishment or the prejudice which he asserts he will suffer and the fact of his race or religion. He does not have to prove on the balance of probabilities that the events (in s.13(b) will take place, but he must show that there is a `reasonable chance` or `reasonable grounds for thinking` or a serious possibility that such events will occur.*".

31. This court has to consider the state of mind of the Romanian Judicial Authority, as *at the time it issued the EAW* in order to be able to make a determination as to whether there were reasonable grounds for thinking that, for example, the purpose was to punish the requested person for one or more of the identified discriminatory reasons.

32. **s.13(b) prejudice (Consequences limb)**

A person`s extradition to a Category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that -

(b) if extradited he might be prejudice at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, gender, sexual orientation or political opinions.

33. A challenge under this limb requires this court to try to predict the potential prejudice that the requested person in this request might suffer by reason of one or more of the identified discriminatory reasons provided for.

34. Notwithstanding extensive researches made by both parties and by this court, it appears that there is yet to be a case where an extradition request made to the UK has failed by reason of a successful s.13(a) or s.13(b) challenge.

35. The closest such decision to order discharge per s.13 appears to have been **Vassos v Romania** where extradition was initially refused by **District Judge Ashworth** (ruling released on **7th June 2016**). The learned Judge upheld a submission made under the provisions of s.13(b) of the 2003 Act.
* *parties please note that the Ruling of the learned Judge mistakenly referred to s.13(a). This was later corrected by Garnham J on appeal (see below) acknowledging that the typographical error).*

36. **Vassos** - a Greek national - had received a 6 months suspended sentence of imprisonment for Bribery of a Romanian police officer, so as to influence the outcome of an ongoing court case. That sentence was appealed by the Romanian prosecuting authorities whereupon it was varied to a term of 1 year immediate custody.

37. District Judge Ashworth had found that `*whilst the vast majority of the reasoning for increasing the sentence (from 6 months to 1 year) was on public policy and deterrence grounds,*` he was satisfied that **...**`*a factor taken into account was that the act of corruption was committed by a ``foreign national``*.

38. The decision in Vassos was successfully appealed by the Judicial Authority. On **7th February 2017** Mr Justice Garnham gave his Judgment : see **Craiova Court of Appeal, Romania v Vassos (2017) EWHC 682 (Admin).** He ruled that *"what is determinative is whether the reference to the fact that the offence was committed by a foreign person is a descriptive or operative part of the Romanian High Court analysis..."*.

39. The learned Judge found that the District Judge had erred in finding that `*the nationality or race of the Defendant is regarded by the court as of any relevance at all. There is not, in my view, the proper foundation for a conclusion that the paragraph I have cited* (see paragraph 22 of His Lordship`s Judgment) *establishes a serious possibility that race or nationality played a part in the sentencing*`.

40. This court heard lengthy s.13(a), s.13(b) & linked Article 6 submissions in the request made by a Lithuanian Judicial Authority for the return of **VladimirAntonov & Raimondas Baranauscas** in **2014**. That case had some similarities to the present case.

41. Antonov & Baranauscas were Chairman and Managing Director respectively of the Lithuanian-based Snoras Bank (`**Snoras**`). Their return was sought to stand trial for very serious fraud / theft allegations relating to their management of Snoras.

42. It was submitted on their behalf, inter alia, that :
(i) the issuance of warrants had been s.13(a) politically motivated
(ii) they would each face s.13(b) prejudice upon return, and
(iii) neither would be able to receive a fair trial.

43. It was submitted that the `**Lithuanian Morning**` newspaper (34% owned by **Snoras**) was hostile to the Lithuanian Government and that, accordingly, the Lithuanian State authorities improperly determined that it had to be silenced, as a result of which it took over the running of both Snoras and the newspaper.

44. Criticisms were also made by the defence of prejudicial comments said to have been uttered by the Lithuanian President and Members of Parliament (inside and outside of parliament) said to imply guilt of the requested persons, thereby adding to concerns that a fair trial would not be possible.

45. After protracted proceedings before this court, extradition was ordered, later confirmed on appeal.

46. It is perhaps trite to state that merely because no s.13 challenge has been successful this does not lessen the attention and care with which this court must consider each such challenge.

47. Abuse of Process.
This challenge is unconnected with the Abuse of Process submissions rejected by this court on **27th August 2017**.

48. The starting point in UK domestic Abuse of Process challenges would appear to be **Connelly v DPP (1964) (AC)1254.**

49. In **Connolly** the court dealt with the submission that the trial judge had erred in holding that he was unable to stay proceedings even if he considered them to be unfair.

50. An important post-**Connolly** decisions was the House of Lords decision in **re Riebold (1965) 1 All ER 653** where concerns were expressed that **Connolly** could be interpreted as affording Judges an almost unbridled discretion to halt prosecutions that were perceived to be unfair or oppressive.

51. Their Lordships in **Riebold** sought to rein in the interpretation of **Connolly** by stating that a court should only intervene to stay proceedings where there was **clearly** an abuse of the court`s process.

52. In **Riebold,** Lord Salmon stated that .....

`*...a judge has no power to refuse to allow a prosecution to proceed merely because he considers that, as a matter of policy, it not have been brought. It is only if a prosecution amounts to an abuse of process of the Court and is oppressive and vexatious that the judge should has the power to intervene.* ***Viscount Dilhorne*** *echoed similar sentiments when he said, in a concurring judgment that a prosecution should only be halted....* *" in the most exceptional circumstances".`*

53. **Lorraine Osman** was a prominent Hong Kong businessman, arrested in the UK as he was sought by the Hong Kong authorities to face trial in respect of a substantial frauds said to have been committed there. Over a number of years he launched a series of (unsuccessful) appeals, some of which were reported.

54. In such appeal - **Osman v Hong Kong CO / 252/90** - Leggatt LJ, giving the decision of the court said....``*as soon as it is established that the Hong Kong Government has jurisdiction to prosecute the Appellant in what they say were substantial frauds involving loans to companies in Hong Kong, it becomes exceedingly difficult to impugn either the decision to prosecute or the motive with which that decision was taken.*``

55. The Divisional Court in **R (Government of the USA) v Tollman (2006) EWHC (Admin)** held that the extradition judge has the power and duty to consider whether the process of the court is being abused.

56. In order to succeed in an **Article 6** challenge based on Abuse of Process, the requested person has to demonstrate that there are substantial grounds for believing that there is a real risk of a flagrant denial of a fair trial.

57. This issue was considered in some detail in the House of Lords decision in **EM (Lebanon) v Secretary of State for the Home Department (2008) UKHL 64** and the parties are referred thereto.

58. Lord Phillips LCJ in **Tollman** (aforesaid) identified the steps to be followed when a court is confronted with an Abuse of Process challenge :

i. The Judge should initially insist that the conduct alleged to constitute the abuse is identified with particularity.

ii. The judge must then consider whether the conduct, if established, is capable of amounting to an abuse of process.

If it is, then :

iii. The Judge must next consider whether there are reasonable grounds for believing that such conduct may have occurred.

If there are, then :

iv. The Judge should not accede to the request for extradition unless he has satisfied himself that such abuse of process has not occurred.

59. Mr Justice Laws, in giving the decision of the Divisional Court in **Ahmad & Aswat v Government of USA (2007) HRHL** made reference to the important fundamental assumption of good faith on the part of the requesting State.....

"where the requesting State is one in which the UK has for many years reposed the confidence not only of general good relations, but also of successive bilateral treaties consistently honoured, the evidence required to displace good faith must possess special force.".

60. In **Symeou v Greece (2009) EWHC (Admin)** there were disturbing allegations of misconduct on the part of Greek police officers while investigating an allegation of manslaughter.

61. The court in **Symeou** held that the implied residual Abuse of Process jurisdiction was limited to considering the conduct of the

prosecuting authority but not that of the investigating police officers of the requesting State.

62. Abuse of Process was later scrutinised in **Mehtab Khan v Govt of USA (2010) EWHC (Admin).** Mr Khan was wanted by the US authorities to stand trial for drug trafficking allegations. The District Judge had rejected defence arguments of unlawful entrapment.

63. The Divisional Court in **Khan,** in rejecting his appeal, confirmed that the Abuse of Process jurisdiction is residual in nature applying only when issues raised could not be satisfactorily addressed by the statutory protections.
See also **Bermingham v Director of the SFO (2006) EWHC (Admin).**

64. In **Khan** the Divisional Court further highlighted the protection afforded by **s.87** of the **2003 Act** (Human Rights compatibility) which it was satisfied would be monitored appropriately during the trial process in the United States of America.

65. In **Fuller v Attorney General of Belize (2011) UKPC23**, Lord Phillips, at paragraph 5, described the abuse of process jurisdiction in the following terms : ....
" `**Abuse of Process**` is not a term that sharply defines the matter to which it relates.
It can describe any of the following situations :
(i) making use of the process of the court in a manner which is improper, such as adducing false evidence or indulging in inordinate delay, or
(ii) using the process of the court in circumstances where it is improper to do so , for instance where a defendant has been brought before the court in circumstances which are an affront to the rule of law, or
(iii) using the process of the court for an improper motive or purpose, such as to extradite a defendant for a political motive".

66. **ECHR Challenges**

Article 3 Challenge

Article 3 states :

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

It is necessary for the requested person to demonstrate that there are strong grounds for believing that, if returned, he will face a **real risk** of being subjected to torture or to inhuman or degrading treatment or punishment.

67. **R v Special Adjudicator ex parte Ullah (2004) AC** is an important decision. Albeit this was an Immigration Appeal decision, it has equal relevance to extradition cases. This case establishes that there needs to be a risk that is substantial and not merely fanciful.

68. To determine whether there is a real risk of ill-treatment, it is necessary for this court to examine the foreseeable consequences of sending the person to the receiving country, bearing in mind the general situation as well as his personal circumstances.

Article 6 (Right to a Fair Trial)

69. In **Miklis v Deputy Prosecutor, Lithuania (2006) ECHR (Admin)** Lord Justice Latham stated .....

" *The fact that human rights violations take place is not of itself evidence that a particular individual would be at risk of being subjected to those human rights violations in the country in question. That depends upon the extent to which the particular individual could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse*".

70. The requested person needs to demonstrate that he risks suffering a `***flagrant denial***` of a fair trial in the event of his extradition being ordered.

71. This issue was considered in **Government of USA v Montgomery (No 2) (2004) 1 WLR 2241** when the House of Lords emphasized the `*exceptional*` nature of this jurisdiction.

72. **Lord Carswell,** at paragraph **26** of his judgment in **Montgomery**, stated that in order to succeed, the defence would need to show `**an extreme degree of unfairness**` amounting to a `*virtually complete denial or nullification of his Article 6 rights, which might be expressed in terms familiar to lawyers in this jurisdiction as a fundamental breach of the obligations contained in the article*`.

73. The European Court held in **Delcourt v Belgium (1970) 1 EHRR 355** that .....
*"In a democratic society.... the right to a fair administration of justice holds such a prominent place that the restrictive interpretation of **Article 6(1)** would not correspond to the aim and purpose of that provision."*

74. This issue was also considered during the appeals of **Rexha v Italy (2012) EWHC 1274 (Admin)** and **Drew v Poland (2012) EWHC 3073 (Admin)**. The Divisional Court rejected challenges based on the assertion that the systems operating in Italy and Poland represented a flagrant denial of justice in a general or systemic sense, capable of having an adverse effect on the appellants ability to have a fair trial.

75. In **AT v Luxembourg (2013) EWHC 4010 (Admin)** (`**AT**`) the High Court looked at what could amount to a `*flagrant denial*` per **Othman v UK (2012) 55 EHRR 1.1.**

76. The High Court in **AT** confirmed that what has to be established in order to justify such a refusal to extradite is ` ***set at a high level***`. In **AT** the court acknowledged that albeit a breach of Article 6 had occurred (initial denial of access to a lawyer), it found that the very high threshold had not been reached.

77. In **Ismail v Secretary of State for the Home Department(2013) EWHC 633(Admin),** Goldring LJ underscored the very high threshold that needed to be vaulted by the requested person..... " *Even in a case where defence counsel was appointed by the public prosecutor, the applicants were kept incommunicado until trial, the trail was not held in public and closed to the defence lawyers and self-incriminating statements were obtained in highly doubtful circumstances, extradition was permitted. That underlines how very exceptional*

must be the circumstances to result in the application of Article 6 in a case such as the present.

78. **s.21 A (Proportionality / Compatibility)**

In relation to a request based on an accusation, the provisions of **s.21A** of the **2013 Act** – as implemented by **s.157** of the **Anti-social Behaviour, Crime and Policing Act 2014** also need to be carefully considered by this court.

This states :

s.21 A 'Person not convicted : human rights and proportionality :

(1) If the judge is required to proceed under this section (by virtue of **s.11**), the judge must decide both of the following questions :

(a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;

(b) whether the extradition would be disproportionate.

(2) In deciding whether the extradition would be disproportionate, the judge must take into account the specific matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must **not take any other matters** into account.

(3) These are the specified matters relating to proportionality –

(a) the **seriousness** of the conduct alleged to constitute the extradition offence;

(b) the **likely penalty** that would be imposed if the person was found guilty of the extradition offence;

(c) the possibility of the foreign authorities taking measures that would be **less coercive** than the extradition of D.

(4) The judge must order D`s discharge if the judge makes one or both of these decisions :

(a) that the extradition would not be compatible with the Convention rights ;

(b) that the extradition would be disproportionate.

(5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of the following decisions-

(a) that the extradition would be compatible with the Convention rights;

(b) that the extradition would not be disproportionate.

I find as follows :

(i) The allegations are clearly serious carrying a maximum

punishment of up to **5** years imprisonment.
(ii) The nature of the criminal conduct means that there must be a serious possibility that a prison term of some length may be imposed in the event of conviction after return.
(iii) I have not been made aware of any coersive measures, short of extradition, that would be appropriate, and I do not consider that there are any in this case. (see, for example, **Volle v Germany (2015) EWHC 1484 (Admin).**

79.Chronology of these proceedings in Romania.
The investigation into bribery allegations of certain Romanian judges began on **23rd March 2012** when **Monica-Angela Borza**, a Judicial Liquidator, was reported to the Romanian DNA for involvement in the bribery of Judge Moldovan of the Bucharest Tribunal.

80.B-A A was summonsed for questioning on **21st May 2014**.

81. Dan Adamescu was summonsed as a suspect on **22nd May 2014**.

82. Comments adverse to the Adamescus are said to have been made by Prime Minister Ponta on **24th May 2014.**

83. Dan Adamescu was summonsed as a suspect on **5th June 2014**. Upon arrival he was arrested and then remanded in custody.

84. Dan Adamescu (with others) was sent for trial on **24th June 2014.** He was released under house arrest on **29th August 2014.** He was later convicted and sentenced to **4 years 4 months** imprisonment (part of which was to be served concurrently : i.e. **3 years 4 months**).

85.B-AA`s case relating to allegations of bribery was severed on **22nd September 2015**.

86.Victor Ponta was replaced as Prime Minister by **Dacian Ciolos** on **4th November 2015**.

87. On **22nd March 2016** criminal proceedings were commenced in Romania against Mr Adamescu in respect of the bribery/corruption allegations that are the subject of the current EAW.

88. On **4th May 2016** an arrest warrant for Mr Adamescu in respect of the bribery/corruption allegations was issued by the Bucharest Court. That warrant was later revoked as the result of an appeal made by Mr Adamescu but was later re-issued. An appeal in respect of that re-issued Romanian arrest warrant was dismissed on **26th May 2016.**

89. Relevant aspects of recent Romanian political history :
In **1949** the **Treaty of London** established the **Council of Europe** (`the Council`) based on the principles of Pluralist Democracy, Human Rights and the Rule of Law.

90. It was established that if a State was to join the Council, it needed to demonstrate a respect for both the Rule of Law and Human Rights. **Romania** joined the Council in **October 1993**.

91. **The Organisation for Security and Co-operation in Europe** (`OSCE`) was created by the **Helsinki Treaty** of **1975** and one of its objectives is the promotion of Human Rights.
Romania is a member of OSCE.

92. **Nicolae Ceausescu** was appointed General Secretary of the Romanian Communist Party in **1965**. In **1967** he became Head of State. He retained both of these positions until he was deposed, quickly tried and executed in **1989**.

93. The current political framework operating in Romania is that of a semi-presidential, democratic republic.

94. The Prime Minister is the head of the Government while the President of the Republic is the head of State. Legislative power is vested in the Government of the day. There are 2 chambers of the National Parliament.

95. **Romania** became a fully-fledged member of the **European Union** in **2007**.

96. The **Constitution of Romania** establishes a number of important Fundamental Rights, inter alia :
(i)**Chapter I : Common Provisions** :
Article 15 :
(i) All Citizens enjoy the rights and freedoms granted to them by the Constitution.

Article 20 :
Constitutional Provisions concerning the citizens` rights shall be interpreted in conformity with the Universal Declaration of human Rights, with the tenets and other treaties Romania is a party to.
Where any inconsistencies exist between the covenants and treaties on the fundamental Human Rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.

97. Article 21 :
(1)All parties shall be entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests.
(2) The exercise of this right shall not be restricted by any law.
(3) All parties shall be entitled to a fair trial and a solution of their cases within a reasonable term.

98. In **2019** Romania is due to take on the presidency of the European Union.

99. Romania appointed **Viorica Dancila** of the ruling Social-Democratic Party as its first female Prime Minister at the end of **January 2018**. She is believed to be currently in post.

100. **Evidence served by the Requested Person** :
Mr Adamescu chose not to give evidence during the course of the substantive 5 day hearing. However a very considerable amount of evidence was served and filed on his behalf in support of the challenges raised.

101. It needs to be noted, however, that Mr Adamescu did, in fact, give evidence later (detailed hereafter) but this was limited to his explanation of the events surrounding the last minute production to this court by the defence of what I am satisfied is a fabricated document.

102. The said document purports to be an assurance from the Romanian authorities detailing the Prison conditions that would be made available to Mr Adamescu if he were to be extradited.

103. Whilst much of the defence evidence was served in accordance with this court`s directions, a not insubstantial quantity was also served well outside the directed timescales, without prior application having been made to the court and on occasions even without prior notice either to the court or to the Judicial Authority.

104. This court seems to be regularly reminding parties - and in particular defendants in person or their lawyers - of the importance of abiding by court directions as the Criminal Procedure Rules apply equally to extradition proceedings.

105. Indeed in **Prokop v Poland,** an unreported decision of **Collins J**, sitting in the Administrative Court released on **16th November 2015**, the learned Judge stated, inter alia,
..... `` ***(1) The CPR 2014 rule3.5(6) provide that if a party failed to comply with a rule or a direction the Court could impose such other sanction as might be appropriate. If there had been a failure to provide information there was no reason why the court should not exclude the evidence. That was the only sensible way in which such directions could be given the necessary teeth. The district judge had acted correctly in the circumstances in refusing to allow the respondent to put its evidence before the court.*** ``

106. Mr Adamescu and his legal advisers could have had no complaint had this court chosen to disallow into evidence what

Mr Owen QC in his Skeleton Argument dated **21st November 2017** described as ``*this eleventh hour blizzard of evidence*``, as well as other much of the evidence served thereafter.

107. Some of the statements complained of by Mr Owen QC, so served by the defence had been taken months beforehand and, in this court`s opinion, the explanation given for the delay in service and filing lacked meaningful conviction.

108. As indicated heretofore, the defence continued to serve yet further evidence at intervals up to the final day`s hearing i.e. **23rd March 2018**. This placed the Judicial Authority at a clear disadvantage as it had limited - if any - proper opportunity to respond appropriately.

109. Mr Owen QC complained that the circumstances surrounding service of evidence outside the court`s directions ``*Indicate a deliberate attempt to derail the effectiveness of the hearing on the basis of forcing the Judicial Authority to seek an adjournment in order to be able to reply.*`` The parties are directed to paragraph 9 of his Skeleton Argument dated **21st November 2017** he detailed the evidence complained of.

110. Mr Owen QC made specific reference to paragraph 134 of the decision in **Savov v Czech Republic (2016) EWHC 1862(Admin)** where the then Lord Chief Justice, Lord Thomas, in giving the decision of the court, stated ....`` *A person with a very deep pocket who is determined to frustrate his extradition by every device possible*`` as having particular relevance to these proceedings.

111. This court was not prepared to adjourn the 5 day full hearing so as to enable one defence witness, **Radu Chirita**, to give evidence at a later date, albeit - with some hesitation - it decided to allow into evidence statements made by a number of other witnesses well outside the timetables previously laid down.

112. **Evidence of SC Strategy Limited :**

Mr Keith QC, on behalf of Mr Adamescu, placed considerable reliance on the evidence submitted by SC Strategy Limited (`**SC Strategy`/ `SCS`**) in support of his s.13(a), s.13(b) and Article 6 challenges.

113. Mr Owen QC strenuously objected to the admissibility of the SC Strategy reports as not satisfying the necessary and established legal test for expert evidence.

114. Further and in the alternative, Mr Owen QC asserted that the author of those reports - **Lord Carlile of Berriew CBE, QC** (`Lord Carlile`) - does not possess the necessary expertise to qualify as an expert for the purposes of these proceedings.

115. After hearing initial legal arguments as to the admissability of this disputed evidence, this court decided to consider the SC Strategy reports and to then allow Lord Carlile to give live evidence. The court would then be prepared to receive further submissions in respect of the admissibility of the SC Strategy Reports and Lord Carlile`s oral testimony.

116. Lord Carlile duly attended and gave evidence. He said that it was the first occasion that he had attended court to give such evidence in relation to SC Strategy and / or in respect of his expertise in the area(s) set out in the said reports.

117. Lord Carlile adopted the contents of the following SC Strategy Reports :

(i) **19th September 2016** (1st Report)
(ii) **29th September 2016** (1st Addendum Report)
(iii) **4th January 2017** (2nd Addendum Report)
(iv) **18th January 2017** (Errata Sheet in respect of 1st Report)
(v) **9th November 2017** (2nd Report).

118. Put shortly, the opinion expressed by Lord Carlile is that the prosecution of Mr Adamescu (and of his father) ``.... *bear all the hallmarks of a politically-motivated campaign using the criminal law, started by the Victor Ponta government, and a kind of `lawfare` pursued by the former Prime Minister against many of his opponents*``.

119. Lord Carlile asserted that, after the death of Dan Adamescu, (in prison in Romania in **January 2017**) the campaign has continued against the requested person. His view is that this extradition request is underscored by an ongoing politically-motivated prosecution of Mr Adamescu.

120. Lord Carlile was called to the Bar in 1970 and has extensive experience in dealing with serious criminal cases over a lengthy and distinguished career. He was appointed Queen`s Counsel in 1984. He has also sat as a part-time High Court judge for a number of years.

121. Lord Carlile was a Member of Parliament from 1983 through to 1999, whereupon he was elected to the House of Lords. He was the UK Independent Reviewer of Terrorism from 2001 to 2011.

122. Lord Carlile told this court that SC Strategy was set up in **October 2012** as a company specialising in gathering and assimilating intelligence from various trusted sources both inside and outside of the UK, and providing an informed opinion in relation thereto.

123. Paragraph 7 of the 1st SC Strategy report states that.....
``*SCS has an extensive range of experience in intelligence, terrorism issues, foreign affairs, Parliament, the law, defence, cyber concerns and security, and sensitive matters concerning the structure, governance and obligations of companies and governments. In addition this company has a wide range of knowledge of issues affecting individual and sovereign wealth funds*``.

124. Paragraph 9 of the same report states that.....
`` *For the purposes of this Report SCS has employed the services of investigating associates inside and outside Romania. We have carried out sensitive enquiries with confidential sources in Bucharest...*``

125. Paragraph 10 begins ...`` *We have been assisted specifically in preparing this report by the noted expert on Romania, Dr Jonathan Eyal....*``

126. In relation to this extradition request, Lord Carlile said that SC Strategy conducted a detailed analysis of the context of
(i) the legal proceedings,
(ii) the history of corruption in Romania - especially that associated with the regime of the former Prime Minister Victor Ponta – and
(iii) the political targeting of Mr Adamescu and his father.
This analysis included evidence provided anonymously by individuals described as `*well-placed sources*`` all of whom are said to fear reprisals should their identities be revealed.

127. The only information provided of these `**Sources**` is as follows :
***(A)* : Very knowledgeable understanding of the Romanian National Anti-Corruption Directorate DNA**
***(B)* : Very knowledgeable understanding of the DNA**
***(C)* : Access to the Cabinet of Ministers` Permanent Secretariat.**
***(D)* : A well placed official with direct knowledge and experience of the DNA case in respect of DA/B-A A**
***(E)* : A senior staffer at the Senate**
***(F)* : A senior staffer at the Senate**
***(G)* : A well-connected former MP in Romania**
***(H)* : A second well-connected former MP in Romania**
***(I)* : A senior law enforcement source**
***(J)* : A well-placed source in the office of the President.**

128. For the purposes of preparing the SCS reports, Lord Carlile liaised closely with his fellow SC Strategy director Sir John Scarlett (`**Sir John**`) and with their associate Dr Jonathan Eyal (`**Dr Eyal**`).

129. **Sir John** was the former Chairman of the Cabinet Office Joint Intelligence Committee before becoming the Chief of British Intelligence Agency (MI6), which latter post he held from 2004 to 2009.

130. **Dr Eyal**, born in Romania, was raised and educated in the UK from an early age, and is said to have a wealth of experience in dealing with matters relating to the Romanian political scene and structure.

131. Lord Carlile added that ``*for the purposes of this (1st) Report SCS has employed the services of Investigating Associates inside and outside Romania. We have also carried out sensitive inquiries with confidential sources in Bucharest...*``.

132. Lord Carlile made reference in the SC Strategy reports to the 10 unnamed `**Sources**` (A-J) detailed above. So far as this court has been made aware, none of those witnesses has provided any written statement. The information that they are said to have provided is thus incapable of any challenge by the Judicial Authority.

133. Lord Carlile stated at paragraph 26 of his Report dated **9th November 2017** ....`` *In all cases the witnesses (and others that were approached) were unwilling to meet with instructing solicitors or myself to provide verbal statements*``.

134. These witnesses are said to have spoken to Romanian-based investigators known to SC Strategy, albeit no details of these investigators have been revealed, save that they are said to be `*retired intelligence officers*`.

135. During the course of his evidence, Lord Carlile also produced 3 signed witness statements dated **15th April 2017, 17th April 2017 & 15th July 2017** from 3 other anonymous witnesses, none of whom are said to be the `**Sources**` ***A*** to ***J*** above.

136. Each of the statements from those 3 further witnesses has been redacted. Not only have their names, dates of birth and signatures been deleted, but also further pieces of information from each statement has been blanked out.

137. Once again, none of the information contained in these 3 witness statements is capable of any effective challenge by Romania. All that has been disclosed about these individuals is that each is said to be a serving official employed by the State of Romania and that each holds a genuine fear of loss of life if his or her identity were to be revealed.

138. It should perhaps be stressed that the Judicial Authority does not accept any of the information said to have emanated from `**Sources**` ***A – J*** above, nor any of the information separately contained in the 3 further anonymised witness statements.

139. Lord Carlile moved on to say that in respect of the Ponta Government`s attitude and conduct towards the media in Romania ....."*it is our firm opinion that :*
i. *PM Ponta targeted the media throughout his time in office*
ii. *He used his associates and the powers of the State to silence criticism;*
iii. *He deployed the full resources of State powers against the media networks he did not like.*"

140. This court notes that Romana Libera remains firmly under the control of the **Nova Group** to this day. Notwithstanding the mountain of defence evidence served in this case, no statement has been received from any Romana Libera journalist or other employee (past or present), for example, complaining about any political interference or of any threats or pressure that may have been made to any journalist at any stage by the Ponta (or any later) government or by any other Romanian State official.

141. Lord Carlile also pointed out that the Social Democratic Party won the Romanian General Election in **December 2016** but that its then leader **Liviu Dragnea** was prevented from taking office due to a conviction for election fraud arising from an earlier election.

142. **Are the SC Strategy reports admissible as Expert evidence?**

This issue was the subject of lengthy and detailed submissions from both parties and requires careful analysis

143. Mr Keith QC forcefully submitted that the SC Strategy reports and exhibits are clearly admissible under the principle laid down by the House of Lords in **Schtraks v Government of Israel (1964) 556 (HL), (`Schtraks`).**

144. He maintained that the decision in **Schtraks** expressly provides that when this court considers the statutory s.13 bar, any material going to any such issue raised is be considered, although the nature and provenance of the material will go to its weight.

145. Mr Keith QC also prayed in aid the supportive decision of **Hilali v Central Court of Criminal Proceedings, Spain (2006) EWHC 1239 (Admin)** (`**Hilali**`) which states that .....

``*it has long been established since* ***Schtraks v Israel*** *that the Court in considering these matters is not bound by the ordinary rules of evidence; the appellant may rely on any material in support of a submission based on s.13*``.

This approach was also confirmed by Aikens LJ more recently in **Antonov & Baranauscas v Lithuania (2015) EWHC 1243 (Admin)** (`**Antonov**`).

146. Mr Owen QC, on behalf of the Judicial Authority, does not accept that SC Strategy is capable of providing **any** admissible expert evidence. He focused on :

(a) his assertion that Lord Carlile is not to be accepted as an expert in this case, as he simply lacks the necessary expertise as he is merely a collator of information and

(b) the fact that SC Strategy relies very heavily on :

(i) the reliance on unnamed sources who are said to have provided information in unknown circumstances to unnamed intermediaries in Romania and

(ii) the redacted statements from 3 other unidentified witnesses who are said to have provided their statements to SC Strategy personnel from the UK.

147. Mr Owen QC submitted that any reliance by this court on any of the anonymous defence witnesses would be an invitation

to find that the material is relevant, truthful and persuasive but that this would clearly evade the Supreme Court`s binding decision in **B & Others v Westminster Magistrates court (2015) AC 1195 SC.**

148. Mr Owen QC relied on the ruling in **B & Others**, given by **Lord Mance** as follows : ...`` *It is inevitably only speculation that any material which the appellants might adduce in a closed material procedure would be relevant, truthful or persuasive, and the very nature of a closed material procedure would mean that this could not be tested. The same applies to any material which might be ordered to be adduced to the CPS on the basis that it would not be further disclosed to the Government of Rwanda. The appellants are inviting the Court to create a further exception to the principle of open inter partes justice, without it being possible to say that this would be necessary or fair...*``

149. Lord Mance, later added in **B & Others** .....
``*The legislation has changed since **Schtraks (1964) AC 556**, but it is unnecessary on this appeal to say anything more about the established practice on which the parties are agreed. Whatever the admissibility scope, the Supreme Court understands it to be common ground that it does not extend beyond the areas of extraneous considerations, human rights and abuse of progress; in particular it does not apply to other issues such as whether a prima facie case has been shown under s.84(i. Under the current legislation, the better analysis may be not that the ordinary rules of evidence are suspended in the areas to which the practice is agreed to apply, but that a broad approach is taken to the nature and basis of the expert evidence that is admissible. **In any event, any relaxation in the area of extraneous considerations, human rights and abuse of process cannot affect the normal rules applying to a witness called to give evidence before a court, viz that his or her evidence must be capable to being tested inter partes**.....(emphasis added).*

150. It is an established legal principle that the hearsay provisions of the Criminal Justice Act 2003 do not apply in extradition proceedings (see, **Friesel v USA (2009) EWHC 1659 (Admin).**

151. It has also been established that extradition proceedings are to be treated as criminal proceedings (see **R v Governor of Brixton Prison ex parte Levin (1997) UKHL AC 741.)**

152. Mr Keith QC advanced a strong argument that the areas of evidence in respect of which experts are able to provide assistance to the court are not closed, and that this is particularly so when this court deals with s.13 arguments.

153. Mr Keith QC pointed out that the evidence provided by Lord Carlile relates to information received by him and others at SC Strategy whereafter - using their pooled experience - the reports were prepared, the contents of which reflect the views of all participants.

154. He stressed that the rulings in **Schtraks, Hilali** and **Antonov** above are binding on this court, and evidence that assists the court in considering a s.13 challenge falls to be admitted.

155. Lord Carlile had previously submitted an unconnected SC Strategy report - on behalf of the defence - to **District Judge Grant** in respect of the request by the **Russian Federation** for the extradition of **Georgy Nikolaevich Shuppe.**

156. During the course of his detailed Judgment in **Shuppe**, District Judge Grant stated as follows .....

*`` There was a dispute about the admissibility of the report of SC Strategy Limited dated **29th November 2016**. The proprietors of the company are all distinguished individuals.*

157. *Lord Carlile was due to give evidence during the substantive hearing. I am told that he was not available to give evidence that week and although I received written submissions about the admissibility of the report from Mr Caldwell and Mr Evans (for the Requesting State), I heard no oral submissions and I was not pressed by Mr Keith (for the defendant) to adjourn the hearing to accommodate Lord Carlile at a later date.*

158. *The report contains a summary of historical observations which I suspect are not contentious but there are also a number of historical observations which form the basis of the conclusion of the report which I am told are contentious. The report makes clear that the significant sources on which the report`s conclusions are founded are a Dr Jonathan Eyal, a `respected and internationally renowned expert on the Russian Federation` as well as a number of anonymous sources.*

159. *Without hearing any evidence from Lord Carlile or Dr Eyal and without any further information about the anonymous sources I concluded that it was appropriate to admit the report but to pay no weight either to the observations in the report or to the conclusion.``*

160. This court has to consider and decide whether Lord Carlile has the necessary expertise so as to satisfy the established test in order for this court to be able to properly receive his evidence.

161. Lord Carlile is clearly a very well-respected lawyer who also has considerable experience in the field of terrorism legislation. Point 6 of page one of the 1st SC Strategy report states that ……..`` *he (Lord Carlile) takes a particular interest in political risks matters, and has advised individuals and corporate entities from countries round the World, including the former Soviet Union.``*

162. The Report released by the Law Commission on **21st March 2011** is an important document that deals with Expert Evidence and needs to be considered.

163. This Report helpfully sets out a number of relevant factors to be taken into account :

The Current Law Admissibility Test :

(i) ``Assistance :

In accordance with the leading case of **R v Turner (1975) QB 834,** an expert`s opinion … `*is admissible to furnish the court with…information which is likely to be outside the experience of a judge and jury.*`

(ii) Relevant Experience :

`` *The individual claiming expertise must be an expert in the relevant field. This was described in the South Australian case of* ***Bonython*** *as a requirement that the individual* ***`has acquired by study or experience sufficient knowledge of the subject to render his(or her) opinion of value`****, a description which has found favour in England and Wales. Against those points, however, it should be noted that the threshold cannot (we suggest) be any lower than a requirement of proof on the balance of probabilities: secondly, that amateurs are not qualified to give some types of expert evidence, and thirdly, that explicit*

guidelines for determining expertise are now being formulated for certain scientific fields``.

164. The Report continues ..... `` *A recent judicial comment suggests, moreover, that the threshold for demonstrating expertise is quite low (see* ***(Doughty v Ely Magistrates Court (2008) EWHC (Admin)*** *at paragraph 24 ... `whether the claimant is a good expert or not is neither here nor there. The quality of his report is neither here nor there... These matters are not a sufficient basis for having ruled the claimant to be simply not competent to give expert evidence at all``.*

(iii) Impartiality :

The expert must be able to provide impartial, objective evidence on the matters within his or her field of expertise.

(iv) Evidentiary Reliability :

The expert`s opinion must in other respects satisfy a threshold of acceptable reliability.

165. The relationship between the limbs **(i)** to **(iv)** above was set out at point 2.17 of the Law Commission Report. Once the **Turner** test regarding its probative value has been resolved, the purpose of the other 3 limbs is said to be ``*to ensure that such expert evidence is admitted in criminal proceedings only when it satisfies a minimum threshold of general reliability, what might be called `reliability in the round`.*"

166. The authors of the Law Commission Report recommended that primary legislation should provide that expert evidence in criminal proceedings should only be admitted if ;

(1) the `*Turner test*` is satisfied and

(2) it is proved on the balance of probabilities that the individual claiming expertise is qualified to give such evidence.

167. Furthermore, **Part 19 of the Criminal Procedure Rules** was amended (as from **October 2015**) to include a new rule about an expert`s duty to the court.

168. It confirmed that an expert must help the court to achieve the overriding objective

19.2.- (1)(a) by giving opinion which is –

(i) objective and unbiased, and

(ii) within the expert`s area or areas of expertise.....

The expert has a duty to the court (overriding the duty to the

person from whom the expert received instructions or by who the expert is paid) and this duty includes obligations set out in **19.2(3)** -
(a) to define the expert`s area or areas of expertise- (*both in writing and in giving live evidence)*
(b) when giving evidence in person, to draw the court`s attention to any question to which the answer would be outside the expert`s area(s) of expertise
(c) to inform all parties and the court if the expert`s opinion changes from that contained in a report served or given in a statement.

169. **The Right Hon. Lord Hodge** gave a relevant lecture in the Middle Temple on **9th October 2017** titled " ***Expert Evidence: Use, Abuse and Boundaries".*** He made reference to the Supreme Court`s decision in **Kennedy v Cordia (Services) LLP (2016) UKSC 6,** a case concerning health and safety regulations.

170. During the course of his lecture, Lord Hodge noted that ....``*in considering the admissibility of expert evidence, the Court accepted as authoritative the guidance given in* ***R v Bonython*** *which I have already discussed. The Court suggested that there were 4 considerations which governed the admissibility of expert evidence. They were :*
First, *whether the proposed expert evidence will assist the court in its task ;*
Secondly. *whether the witness has the necessary knowledge and expertise*
Thirdly *: whether the witness is impartial in his or her presentation and assessment of the evidence; and*
Fourthly, *whether there is a reliable body of knowledge and experience to underpin the expert`s evidence.``*

171. Lord Hodge later referred to the obiter dictum of Lord Eassie in **Mearns v Smedwig (1999) SC 243** that .....
`` *A party seeking to lead a witness with purported knowledge or experience outwith generally recognised fields would need to set up by investigation and evidence not only the qualifications and expertise of the individually skilled witness, but (also) the methodology and validity of the field of knowledge or science*``.

172. Lord Hodge also made reference to Para 2 of Practice Direction 35 .... ``*Experts should assist the court by providing*

objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate``.

173. Returning to the case of **B & Others v Westminster Magistrates Court 2015** (see above) this court notes part of the important ruling given by **Lord Hughes** wherein he said as follows..... ``*An extradition judge will bear in mind that where the issue is the presence of a prime facie case, he is generally not concerned to assess the credibility of the witness relied upon, at least not until they are so damaged that no court of trial could properly rely on them. Nevertheless, it is likely that any extradition judge will be more cautious in relation to the admission of anonymous evidence on the issue of a prima facie case than in relation to s.81 or s.87 issues, and the more cautious where it is proferred by the requesting state.*
It is clear that the overriding principle is that such evidence can be admitted when it is fair to all parties that it should be. It must remain an unusual exception to the general practice. That is likely to mean that an extradition judge will apply by analogy, so far as may be relevant, the same principles as are stipulated in the 2009 Act for criminal prosecutions in England and Wales. ***He will need to be satisfied that there is genuine cause for anonymity, generally a justified fear of the safety of the witness or others which cannot otherwise be protected, and that justice requires that the evidence be given.*** *It will also be likely to mean that a crucial factor in his decision whether to admit it will be the extent of the means available to the other party to challenge it.* ***In considering this question he will no doubt want to consider whether the party tendering the witness has or has not provided the maximum possible information about the witness, short of identifying material which could be deployed in challenging him.*** *He will no doubt have in mind that anonymity may often weaken the weight which can be given to evidence given. Providing, however, he makes all relevant enquiries and admits the evidence of a person who is anonymous to a party only if satisfied that the proceedings are nevertheless fair, he has power to hear such a witness``.* (emphasis added).

174. Importantly in this court`s view, in relation to the anonymised witnesses in this current case, it cannot be said that this court has been provided with anything like `*the maximum possible information about witnesses, short of identifying*

material which could be deployed in challenging him` (per Lord Hughes in **B & Others** above).

175. It is also noted, however, that Lord Hughes in **B & Others** acknowledged that..... ``*an extradition judge has power, if justice calls for it, to receive the evidence of a witness who is anonymous to one or all the parties*`` (see paragraph 63 of his ruling). In my view however, this current case is not one where justice demands such evidence to be given anonymously.

176. The question of exclusion of evidence under the principles of s.78 of the Police and Criminal Evidence Act was considered in some detail by **Professor Richard Stone,** then of Nottingham University, in an article written in 1995. Whilst the general theme of that article related to considering evidence unfairly obtained by the prosecuting authorities, the article also considers other aspects of admissibility of evidence.

177. During the course of this article, Professor Stone considers the `*Repute*` issue.....

`` *the fourth approach is perhaps best exemplified by the Canadian Charter of Rights and Freedoms, which allows evidence to be excluded if `having regard to all the circumstances, the admission of it would bring the administration of justice into disrepute..... ``Fairness of the proceedings`` involves a consideration not only of fairness to the accused but also ... of fairness to the public`.*

The `Repute` principle, for this reason, is likely to leave much to the discretion of the judge in the particular case, who will have to weigh these two considerations, both of which are concerned with maintaining the reputation of the trial process`.

178. As previously mentioned, it is relevant to bear in mind that during the course of his evidence Lord Carlile stated that :

(i) SC Strategy received the information provided by trusted Romanian agents in respect of information provided to them by the anonymous Sources (***A to J***).

(ii) he has considered the contents of the statements of – as well as the additional information said to have been provided by – the anonymised witnesses `1`, `2` and `3` as relayed to SC Strategy personnel.

(iii) with the assistance of senior members of SC Strategy staff, he redacted those 3 witness statements, deleting parts of each

statement, including their names, dates of birth, signatures as well as other information set out therein.
(iv) the internal procedure adopted by SC Strategy was that Lord Carlile met with Sir John and Dr Eyal to exchange views and opinions in `brainstorming` sessions. This then enabled Lord Carlile to prepare the said SC Strategy reports.

179. Lord Carlile reiterated that he and his SC Strategy colleagues specialise in :
(i) Considering political risks
(ii) Assessing matters of Foreign Policy
(iii) Receiving information lawfully obtained by trusted agents here and abroad
(iv) Reviewing and assessing the information received thereby enabling him to provide the opinions set out in the reports.

180. Lord Carlile accepted that the SC Strategy reports in this case do not have any footnotes, or bibliographies, nor are there any known peer reviews.

181. SC Strategy Reports / Lord Carlile admissibility RULING :

I have given this issue very careful consideration. I find that the information contained in the SC Strategy reports, as supplemented by the oral testimony of Lord Carlile, does **not** satisfy the test for admissible expert evidence, taking into account submissions made and all relevant case law, including the decisions of **Schtracks v Israel** and of **B & Others v Westminster Magistrates Court (2015)** .

182. My reasons for this finding are :

(a) Lord Carlile does not hold himself out to be an expert on matters relating to Romanian politics, albeit I am told by him that Dr Eyal is said to be such an expert.

(b) Lord Carlile appears to have little first-hand knowledge of the factual matters set out in the body of the SC Strategy reports.

(c) Lord Carlile refers to sources of opinion evidence in the SC Strategy reports but does not claim to have personal expert knowledge from which he would be able to make a reasoned and informed assessment of the reliability of such evidence.

(d) Albeit he has doubtless worked closely with his eminent colleagues Sir John and Dr Eyal in respect of the preparation of the SC Strategy reports, no statement from either Sir John or Dr Eyal has been received by this court, and the Judicial Authority has therefore not had the opportunity of questioning either of them.

(e) In relation to the information received by SC Strategy - via unnamed but trusted Romanian agents -- the circumstances in which each `**Source**` (***A to J***) provided his or her information (e.g. the date(s) / place(s) / which agent met which source / who else was present and the like) remain unknown.

(f) No explanation has been given as to why the identities of the Romanian agents have not been revealed. This court has not received any witness statement from any such agent - even in redacted form - and no explanation for such omission has been provided.

(g) So far as has been made known to this court, none of the 10 anonymous `**Sources**` ***A*** to ***J*** has provided any form of written statement or affidavit. Furthermore is it not known whether any or all of them had been made aware that the information provided by each was to be used in these open court proceedings.

183. **I shall now proceed to consider the situation regarding these witness statements and information in the event that it were to be considered elsewhere that the evidence of Lord Carlile / the SC Strategy reports are all to be admitted into evidence.**

184. I therefore turn to consider the appropriate weight that should be given to this information / evidence, in that event.

185. Mr Keith QC submits that the information provided by the 10 `**Sources**` and the 3 unnamed witnesses produced by Lord Carlile should be given considerable weight. He points out that each of them holds or has held an important position within Romania and that unless they have all chosen to separately fabricate the information provided, their information should be accepted as being truthful and reliable.

186. Mr Owen QC submits that, in the event that this court were to admit the contents of the SC Strategy Reports and Lord Carlile`s accompanying testimony, no reliance can be properly placed on the SC Strategy material.

187. This court notes that witnesses `1` and `2` appear to have been asked further questions beyond the information set out in their redacted witness statements, but that this further information appears not to been signed by either of them, rather it has been provided to this court as a series of replies to questions said to have been asked of them.

188. This Court has to bear in mind that the Judicial Authority has not been able to check any of the information provided by any of the anonymised witnesses revealed by SC Strategy.

189. Furthermore, as previously stated, so far as the `**Sources**` ***A-J*** are concerned, they have not been interviewed by SC Strategy employees or directors, but by their unnamed Romanian-based counterparts.

190. In all the circumstances, therefore, in my opinion, were it to be considered that this evidence is, in fact, admissible, it would be appropriate for this court to give the oral evidence of Lord

Carlile and the contents of the SC Strategy Reports practically no weight at all.

191. I would add that Lord Carlile`s lack of necessary expertise is an added impediment to the weight that should be given to his live evidence as well as to the documents that he seeks to produce.

192. **Evidence of Dr Patrick Basham (`Dr Basham`).**

Dr Basham gave live evidence in support of the s.13 and Article 6 challenges. He is the founding Director of the Democracy Institute based in Washington USA.

193. Dr Basham is an expert on the contemporary Romanian political system. He has also written extensively on Romanian politics and corruption.

194. Dr Basham adopted the contents of his reports dated **27th September 2016** and **13th November 2017**.

195. Dr Basham provided some insight into the anti-corruption drive that is led by the Anti-Corruption Directorate (`**DNA**`). The DNA was set up in 2002. In 2013 Laura Kovesi was appointed as the Chief Prosecutor for the DNA, a post that she retains to date.

196. Dr Basham suggested that the DNA has been overly dependent on the Romanian Intelligence Service (`**SRI**`) and has allowed itself to become embroiled in Romanian politics and that, as a result, it has lost its objectivity and independence.

197. In Dr Basham`s opinion, Mr Adamescu`s case bears all the hallmarks of a politically-motivated prosecution. He said that the then Prime Minister (Victor Ponta) appeared to have been almost obsessed with the idea of silencing any critical media outlet (such as `Romania Libera`), albeit Dr Basham acknowledged that this newspaper still operates and remains privately-owned by the Nova Group, in which Mr Adamescu has a substantial interest.

198. Dr Basham was also critical of former Prime Minister Ponta`s " *varied and well-documented public attacks on the Adamescus and their business enterprises...* " as well as "*the*

Romanian Government`s decision to retaliate against Alexander Adamescu because he is mounting a legal defence of his families (sic) *insurance company.*"

199. Dr Basham suggested that the Romanian request for the extradition of Mr Adamescu ...``*was made, apparently, for the purposes of prosecuting and punishing him on account of his political opinions*".

200. Dr Basham is not legally qualified and the assertion that he makes at page 8 of his written report appears - on its face - to seek to usurp the role of this court in determining whether this extradition request is politically-motivated. Albeit not a critical factor, Mr Adamescu`s political opinions remain unknown to this court.

201. During the course of his oral testimony, Dr Basham acknowledged that he had not carried out any review of the evidence presented by the Romanian authorities in the prosecution of Mr Adamescu, that he had not interviewed or otherwise spoken to any of the Judges, witnesses or co-defendants involved in this case nor had he attended the trial of the co-defendants nor the appeal of Dan Adamescu.

202. **Evidence of Mr Catalin Breazu (`Mr Breazu`).**
Mr Breazu is a Romanian lawyer who acted for Dan Adamescu in the Romanian criminal proceedings between **February 2016** and **January 2017**.

203. He adopted the contents of his statement dated **2nd November 2017**.

204. Mr Breazu provided evidence relating to the health issues that his then client suffered whilst detained in Romanian prison estate.

205. Mr Breazu also provided details of the unsuccessful applications for release that were made on Dan Ademescu`s behalf up until shortly before his death in custody.

206. **Evidence of Professor Norel Neagu (`Prof. Neagu`)**
Prof Neagu is a qualified Romanian lawyer and an Associate Professor at the Titulescu University in Bucharest. He adopted the contents of the joint report that he had prepared with Professor Mihai Hotca.

207. He adopted the contents of his reports dated **15th September 2016** and **27th March 2017** (this 2nd report was not served and filed until **31st October 2017**).

208. Prof Neagu is critical of the evidential basis of the conviction of Dan Adamescu. He also queries the apparent decision to re-open the case against Mr Adamescu in **December 2015** after what he says was an unexplained delay of circa 18 months. He also criticises certain unfavourable political pronouncements indicating guilt said to have been made by the then Prime Minister, Victor Ponta, prior to Dan Adamescu`s criminal trial.

209. The defence suggest that the re-launch of proceedings against Mr Adamescu was a knee-jerk reaction to the contemplated arbitration proceedings commenced against Romania by the Nova group.

210. However it appears that the Romanian prosecution was only informed in the summer of 2016 of the said arbitration proceedings, approximately 7 or 8 months **after** the resumption of the criminal process against Mr Adamescu.

211. Furthermore, the Judicial Authority has explained that the reason for severing Mr Adamescu`s case from his co-accused was so as to afford him the opportunity to present himself and in order to protect his rights.

212. There is clearly a substantial disagreement between Prof Neagu and the Romanian prosecutor in respect of :
(i) whether one or more witnesses was given a pardon
(ii) the validity of the conviction of Dan Adamescu at his trial.

213. It is not for this court to decide the guilt or innocence of any person whose extradition is sought either to stand trial or to serve

a sentence of custody, having previously been convicted by a foreign court.

214. It is also noted that the Romanian penal system has an established appeal system in relation to criminal cases. A disgruntled party may appeal to the Court of Appeal and, where appropriate, thereafter to the Romanian Supreme Court.

215. **Evidence of Dr Roxana Bratu (`Dr Bratu`)**
Dr Bratu is an academic research associate in Global and European Anti-Corruption Policies at University College London and a former Visiting Fellow at the centre for Criminology at Oxford University.

216. She adopted the contents of her reports dated **26th September 2016** and **10th November 2017**.

217. Dr Bratu`s opinion is that there are likely to be ...``*elements of political motivation and / or political interference in the prosecutions brought against Mr Adamescu (Sr)/ Mr Adamescu*``.

218. She based her findings on the following assertions that she makes ;
(i) There was a wish to discredit Dr Basescu, the former President of Romania and former ally of Dan Adamescu
(ii) There was also a desire to capitalise on the fall of the Astra Insurance Group (having prized it away from the control of the Adamescu family) and
(iii) The Romanian authorities sought to weaken the influence of the Romania Libera newspaper as it had been a supporter of Dr Basescu.

219. Dr Bratu accepted that the Romania Libera newspaper has not been shut down by the Government, and that it has been allowed to continue to operate on an entirely independent basis, remaining under the control of the Nova Group.

220. Dr Bratu agreed that she has not conducted any review of the evidence in the case against Mr Adamescu. She acknowledged,

however, that such an evidential review would be a critical element in order to be able to form an appropriate view as to whether, for example, the prosecution could be said not to be `genuine`.

221. Furthermore, like Dr Basham, she had not spoken to any of the Judges, witnesses or co-defendants linked to this case, nor had she attended Dan Adamescu`s trial or Appeal.

222. Dr Bratu felt unable to express an opinion on the validity of the convictions of any co-accused in this case, nor in respect of the strength or otherwise of the case against Mr Adamescu.

223. She was asked about the trial of Alina Bica, but she also elt unable to express an opinion as to its fairness.

224. Dr Bratu agreed that the SNA had launched a criminal prosecution against former Prime Minister Victor Ponta, after he had left office.

225. She stated that, in her opinion, the fact that Dan Adamescu had been convicted did not necessarily mean that Mr Adamescu would also be found guilty at his trial.

226. Evidence of Adriana Constantinescu. (`Ms C`).
Ms C gave live evidence in support of her partner, Mr Adamescu. She adopted the contents of her signed witness statements dated **19th September 2016** and **21st July 2017.** Her latter statement had been submitted to the ICSID in support of the claims made against Romania by the Nova Group Investments. B.V. Her said statement dated **21st July 2017** was only served and filed with this court on **31st October 2017**.

227. Ms C gave details of visits to Dan Adamescu in the months leading up to his unfortunate death in **January 2017**. She provided details of his failing health and she lays the blame, in very large part on the poor conditions that he faced within the Romanian prison estate.

228. Ms C gave details of an occasion when she says that she was, in effect, prevented from leaving Romania with her young son in **February 2016**.

229. She also related 2 events in London which, if they are a truthful and accurate recollection of events, would have been very disconcerting for her. Ms C asserts that these incidents amounted to deliberate harassment by Romanian authorities because of her and Mr Adamescu`s association with Dan Adamescu and Astra Insurance.

230. On the 1st occasion Ms C believes that she was the victim of an attempted kidnap attempt. This was in **March 2016** when she says that she was attacked in the street near to her home in North West London during the course of which there was no apparent attempt to steal from her.

231. The 2nd incident is said to have occurred on a date in **January 2017** when Ms C believes that she was being kept under surveillance by members of the Romanian secret police / service whilst in Hampstead, North London.

232. Ms C reported both of the above `London` incidents to the police in a timely fashion, but it appears that no police action resulted.

233. If indeed the incidents did occur as described, it is to be noted that the first took place in an area that, sadly, is well known for street robberies and other acts of anti-social behaviour. So far as the second is concerned, the purpose of the purported surveillance has not been made clear.

234. It may be that each of these incidents is capable of a rational explanation but it would be inappropriate for this court to speculate and it does not feel able to make any findings in respect of those purported incidents.

235. **Evidence of Professor Nigel Eastman (`Prof. Eastman`).** Prof. Eastman gave evidence at the resumed hearing on **31st January 2018.**

236. His evidence is provided by way of support for the **Article 3** challenge based on prison conditions in Romania, including the healthcare provisions available in the event of extradition being ordered.

237. Prof. Eastman has the following professional qualifications : **MD, MB, B Sc (Econ), Barrister, FRCPsych.**
He is Emeritus Professor of Law and Ethics in Psychiatry, and Honorary Consultant Psychiatrist at St Georges` University of London.

238. He adopted his written reports dated **29th September 2016** and **22nd November 2017** which were prepared for use in these proceedings. Prof. Eastman is an experienced medical practitioner who has given written and oral evidence to this (and other UK courts) on a considerable number of occasions in the past.

239. His expressed the opinion that Mr Adamescu suffers from bipolar affective disorder and that he exhibits symptoms of a major depressive illness. He was assisted in his assessment of Mr Adamescu`s condition not only by the face to face meetings with the defendant but also with a lengthy interview with Mr Adamescu`s partner who gave an account of his behaviour that appears to be consistent with a history of hypomania.

240. Prof. Eastman stated that it is very important for Mr Adamescu`s condition and medication to be kept under regular revue. He expressed concerns that were this not to occur, Mr Adamescu`s condition may worsen with potentially serious adverse consequences.

241. Prof Eastman acknowledged that he had not been provided with access to any of Mr Adamescu`s medical records from the USA. He is said to have `*suffered a second major breakdown*` whilst living in New York some years ago (see para. 41 of Prof. Eastman`s 1st Report). Furthermore, the professor had not received any medical records from Germany where it is said that

Mr Adamescu had been declared medically unfit for military service.

242. However Prof. Eastman stressed that the lack of previous medical notes is not a serious impediment to being able to make an informed opinion, as he had been able to consider and assess other avenues of information.

243. He noted that Mr Adamescu had expressed a long-standing reluctance in attending doctors in the past, preferring to self-medicate with lithium which he says that he had been able to source on-line, as well as blood tests which he said that he had also arranged himself.

244. Prof. Eastman had seen the reports of Dr Joseph and considers, what he describes as the latter`s `scepticism` with respect to whether Mr Adamescu is actually suffering from bi-polar affective disorder `*hangs on very little*`.

245. He agreed that the fact that Romanian law allows a prison inmate to engage his or her own private doctor is a right not enjoyed by inmates within the UK prison estate.

246. Prof. Eastman was unable to express an opinion as to the medical facilities available within the Romanian prison system but he was confident that Mr Adamescu`s condition could be appropriately managed within the UK prison estate.

247. He agreed that an inmate in the UK suffering from bi-polar affective disorder was somewhat easier to treat than a person suffering from, say, diabetes or epilepsy as the latter 2 conditions could alter very rapidly whereas the former was slower to change.

248. Prof. Eastman remained confident of his diagnosis. He says that making an assessment of a person`s condition is not dissimilar to putting together pieces of a jigsaw at the conclusion of which the whole picture can be accurately seen.

Live Expert Evidence Called by the Judicial Authority :

249. Dr Philip Joseph (`Dr Joseph`) prepared 2 reports for use in these proceedings. These reports are dated **2nd March 2017** and **18th January 2018**.

250. Dr Joseph is an experienced Consultant Forensic Psychiatrist based at both St Mary`s Hospital Paddington and St Charles Hospital in West London. He was the only live witness called by the Judicial Authority during the course of the full hearing.

251. UK courts have received oral and written testimony from Dr Joseph for a number of years. He attended this court on **31st January 2018** to give evidence and adopted the contents of his said reports.

252. Dr Joseph had previously interviewed Mr Adamescu on 2 occasions, but not his partner. He had also considered the contents to the reports prepared by Prof Eastman.

253. Dr Joseph acknowledged that the information provided by Mr Adamescu and his partner is consistent with a diagnosis of bipolar-affective disorder but he pointed out that this was not supported by independent medical evidence.

254. Dr Joseph is of the opinion that Mr Adamescu is suffering from a moderately severe rather than a severe depression. He notes that Mr Adamescu is able to manage his affairs, instruct lawyers, give evidence (as he did at some length in early 2017 during the International Arbitration Proceedings) and follow court proceedings without apparent undue difficulty.

255. During the course of his first appointment with Dr Joseph, Mr Adamescu said that he had been excused from military service in Germany by reason of his mental health issues **but** a letter which he later provided to Dr Joseph when they met again in **January 2018** states that the reason for discharge was, in fact, physical and unconnected with any mental health issues.

256. Dr Joseph said that in all his years of practice he had never heard of anyone self-medicating with lithium for 12 (or so) years as Mr Adamescu asserts that he had. Dr Joseph also noted that Mr Adamescu`s professed reluctance to seek medical assistance

from doctors appears to have completely evaporated after his arrest in these proceedings.

257. Furthermore, Dr Joseph was very surprised to learn that there had apparently been a medical need for Mr Adamescu to be admitted to the Priory Hospital in North London only 4 days after meeting and engaging well with Dr Joseph (in **January 2018**).

258. It is also noted that, according to his private treating psychiatrist, Dr G Isaacs, Mr Adamescu discharged himself from the clinic 2 days later for financial, (rather than medical) reasons.

259. While not suggesting that he had seen evidence of fakery by Mr Adamescu, Dr Joseph thought it important and appropriate to inform the court of his noted reservations.

260. Furthermore, from what he had seen and read, Dr Joseph was not persuaded that Mr Adamescu currently suffers from bipolar-affective disorder. Mr Adamescu appears not to have had any major episode since **2005** while apparently self-medicating from **2005** to **2016** without adverse incident.

261. Put bluntly, Dr Joseph expressed considerable doubts as to whether Mr Adamescu has, in fact, been self-medicating for the 12 year period he has stated, or monitoring his blood levels for that time span.

262. No medical notes from any of his treating doctors have been provided by Mr Adamescu to support his claimed health issues nor has he served a proof of evidence in relation thereto.

263. As mentioned below, this court heard Mr Adamescu give evidence at some length on **23rd March 2018**. As is explained hereafter, I did not find him to have been a totally reliable witness. Rather he came across to this court as someone whose evidence was carefully calibrated.

264. I have had the opportunity of assessing the credibility Mr Adamescu`s oral testimony. Additionally, I have had the opportunity of considering the expert evidence given to this court by both Prof Eastman and Dr Joseph. I make clear that where there is a difference of opinion between these eminent experts in respect of Mr Adamescu`s health issues, I have little difficulty in

prefering the opinions expressed by Dr Joseph. I accept Dr Joseph`s scepticism of Mr Adamescu`s professed health issues. I agree with Dr Joseph when, for example, he raised serious doubts as to whether, in fact, Mr Adamescu (i) self-medicated without apparent difficulty for bi-polar disorder for a period of 12 years (ii) is currently suffering from bi-polar disorder.

265. LETTER DATED 22nd (?) DECEMBER 2017 :

I now have to deal with matters that arose during the course of, and resulting from the hearing of **31st January 2018**. May I say straightaway that there is no suggestion of any improper conduct either by Mr Adamescu`s counsel or solicitors in respect of what took place on that day, or thereafter.

266. It is necessary to go into these events in some detail. On **31st January 2018**, during the course of his opening address in relation to the Article 3 Challenge, Mr Keith QC produced a further piece of evidence to the court. He had served a copy thereof on those representing the Judicial Authority earlier in the day.

267. The document in question was a colour copy of a letter dated **22nd December 2017** (hereinafter referred to as `***the letter***`) which although emanating from the heads of Romanian Prison Authorities to another department of the Romanian State, had an accompanying envelope addressed to Mr Adamescu. It was said that the original of *the letter* had been sent to the Romana Libera newspaper in Romania in response to a number of requests made by the newspaper regarding the prison conditions to which Mr Adamescu would be subjected if he were to be extradited.

268. Romana Libera remains under the direct control of the Nova Group (`Nova`) and Mr Adamescu is said to have a substantial proprietorial interest in Nova.

269. This court was told that *the letter* had been received by the defence only the day before, i.e. **30th January 2018** – some **40 days** after the date on its face (or **50 days** if the original date was **12th December 2017**). No explanation was provided for the noticeable delay in transmission and / or receipt of *the letter*.

270. *The letter* purports to seriously contradict the most recent assurance document provided by the Judicial Authority dated **15th November 2017** regarding the personal space to be made available to Mr Adamescu in the event of his return.

271. In short, *the letter* offers conditions that would almost certainly **not** be considered to be Article 3 compliant and therefore, if accepted by this court, would almost certainly result in extradition being refused on that ground alone.

272. If accurate, the contents of *the letter* would most likely shatter the credibility of the Judicial Authority in respect of the prison conditions assurances provided to the UK authorities.

273. Mr Owen QC was able to take urgent initial instructions on the contents of *the letter*. He reported back to the court that *the letter* appeared to be a forgery.

274. It later became apparent that there was considerable evidence showing that *the letter* had been fabricated. These are :
(i) The heading reference (1st page, top right hand corner) **63334/DSDRP** relates to a domestic Romanian crime case, of **Grigora Panait** - totally unconnected with Mr Adamescu.
(ii) There is mention in the body of *the letter* to an earlier prison conditions assurance dated **17th August 2017** said to relate to Mr Adamescu, with an accompanying Romanian file number **45313/DSDRP**. However no such assurance document dated **17th August 2017** in respect of Mr Adamescu has ever been served
(iii) The file reference **45313/DSDRP/17.08.2017** (and accompanying assurance) relates to a female, Alina-Elena Raducanu (`**Ms Raducanu**`) whose extradition had been sought by Romania from the UK in 2017 to serve a sentence of imprisonment for people-trafficking - again totally unconnected with Mr Adamescu.
(iv) The Judicial Authority stated that in respect of *the letter*, the Romanian prison authorities had **not** received any prior enquiry from the newspaper (Romana Libera) and that, even if they had, they would not have sent an assurance document to any such periodical. It also discounted the possibility that *the letter* could have been transmitted in error.
(v) It is not accepted that the purported author of *the letter*, the Chief Penitentiary Commissioner and Manager of the Directorate for Safety of Detention and Penitentiary System,

Razvan Constantin Cotofana signed *the letter*, nor did he authorise its dispatch.

(vi) The final page of *the letter* (by the signature) bears a **red** circular seal said to be of the National Directorate for the Management of Penitentiaries, Ministry of Justice, Romania, however, the seal used by the National Directorate is said to be **blue**.

275. On **5th February 2018** email enquiries were made by the CPS of Mishcon de Reya, as to the circumstances in which *the letter* (and covering envelope) had been received. Mr Adamescu and his solicitor were asked to provide written statements in relation thereto. The solicitors were also asked to provide the original of *the letter* for forensic examination by the Romanian authorities. No acknowledgement or reply was received to that letter.

276. A follow-up letter to Mishcon de Reya dated **16th February 2018** was sent by the CPS, but again that also did not meet with either acknowledgement or reply.

277. A further follow-up letter was sent to them on **26th February 2018.**

278. A reply dated **1st March 2018** was sent by Mishcon de Reya, stating … `*Out of courtesy we write to inform you that we will not be providing written witness statements to the CPS or court in relation to the matter raised in your letter of* ***5 February 2018.*** *There is no legal obligation on Mr Adamescu or us to do so and it would be wrong in principle.*

Leading counsel will however be responding to the substance of your letter, and will be providing the court with an explanation of the events in question`.

As can be seen, no mention was made as to the whereabouts of the original of *the letter* or whether / when it would be made available to the CPS for onward transmission to the Romanian authorities.

279. At the Mention hearing of **2nd March 2018**, Mr Keith QC was unfortunately unable to attend court by reason of inclement weather, but his able junior Mr Watson was able to provide the explanation to the court.

280. Mr Watson stated that the defence had come to accept that is not genuine but that, at all material times, Mr Adamescu had acted in good faith and in the belief that the letter was authentic.

281. Mr Watson then gave the explanation which in the opinion of this court lacked credibility.

282. This court felt it necessary to express its concerns that, taking into account the contents of *the letter* and the information subsequently provided by Romania, there appeared to be evidence that may amount to an attempt or a conspiracy to pervert the course of justice in respect of these proceedings in this court.

283. The court was careful not to express any view as to whether Mr Adamescu may or may not have been involved in any such activity but that the court may well feel it necessary to revisit the question of bail.

284. During his address Mr Watson served a 4 page signed Proof of Evidence of Mr Adamescu dated **1st March 2018** which dealt specifically with events relating to *the letter*.

285. Counsel added that his client was now prepared to give evidence on oath in respect of this matter. The hearing for Mr Adamescu to do so was fixed for **23rd March 2018**.

286. Mr Owen QC again enquired as to the whereabouts of the original of *the letter* which the CPS had repeatedly sought but in respect of which enquiry there had been no response.

287. Mr Watson`s instructions were that the original of *the letter* had been destroyed albeit he was unable to provide further details save that the destruction may have been carried out by someone working at the Romana Libera newspaper.

288. This court revisited the question of bail and Mr Adamescu was remanded in custody as it was considered that there were now substantial grounds for believing that he had become a flight risk.

289. On 6th **March 2018**, Mr Keith QC was able to attend and make a renewed application for bail, but this was again refused on the same basis as before (flight risk).

290. This court stated that it was minded to entertain a further bail application in the event that Mr Adamescu were to chose to give evidence in relation to *the letter*, as that was likely to amount to sufficient change in circumstances.

291. The hearing was adjourned to **23rd March 2018** to afford Mr Adamescu the opportunity - if he so chose - to give evidence in respect of *the letter*.

292. On **23rd March 2018**, Mr Adamescu decided that he would give evidence and did so for just over **1 ½ hours**. He gave his evidence in a very measured, assured and confident fashion. He adopted the contents of his 4 page signed proof of evidence dated **1st March 2018**.

293. Having listened with care to his evidence, in my opinion Mr Adamescu was not a totally credible witness..

294. I agree with Prof Eastman, that Mr Adamescu is an articulate and very intelligent man. His command of English is impeccable.

295. Mr Adamescu maintained - unconvincingly in this court`s opinion - that he had had no reason at all to doubt the authenticity of *the letter* until very recently. He confirmed the version of events that had been provided to this court earlier by his counsel, and in general, in accordance with his signed proof of evidence.

296. Mr Adamescu said that, once he received the letter on **30th January 3018**, he only skim read it, such was his excitement as to its contents, while at the same time feeling sure that the Romanian authorities would seek to undermine its contents. I did not find this evidence credible. It stretches credibility too far to think that he only `skim read` such a crucial document particularly as it remained in his possession for a day or so before the hearing resumed on **31st January 2018**.

297. If Mr Adamescu honestly had **no** reason to doubt the authenticity of *the letter*, he would not have had any justifiable

reason to think that Romania would look to challenge its contents. Furthermore it is not at all clear why he apparently felt the need to check the signature of the author of *the letter* against earlier signatures.

298. Is it also mere coincidence that *the letter* – (albeit dated either **12th** or **22nd December 2017**) was only said to have been received by both Romana Libera and by Mr Adamescu on **30th January 2018**, just the day before the final day`s hearing ?

299. In any event, Mr Adamescu said that albeit he did re-read *the letter* later on **30th January 2018** he again did not pick up on the various discrepancies set out at paragraph 274 above nor did he notice that there was no mention of what would have been important rights for him, as a foreign national :
(i) to receive consular visits or
(ii) to be able to engage the services of a private doctor,
even though such rights had been clearly set out in the most recent (i.e. **15th November 2017**) Romanian assurance document.

300. Albeit *the letter* was addressed to `**Mrs Manager**` and was apparently being sent from one organ of the Romanian State to another, the fact that the envelope from the Ministry stated that Mr Adamescu was to be the recipient, did not seem to raise his concerns.

301. Also it did not apparently seem strange to Mr Adamescu that the author of *the letter* (**Mr Cotofana**) will have penned it only a month or so after he had released a significantly different one.

302. In evidence, when pressed by Mr Owen QC to confirm whether, in fact, he now accepted that the letter was a fabrication, Mr Adamescu seemed more intent on maintaining insistence that the substance of *the letter* was accurate rather than expressly state whether or not he now agreed that it had been fabricated.

303. During the course of his live evidence Mr Adamescu appeared to be rowing back from the earlier concession, made on his behalf, that the defence did accept that *the letter* had been fabricated.

304. Returning to the chronology of earlier events, Mr Adamescu gave an unconvincing account of the meeting which he said took place - on a date he said he was unable to recall - between himself, and `**J**` the investigative journalist from his newspaper and `**J**`s contact from the Romanian prison department `**X**`.

305. **J** is said to have brought **X** from Romania as apparently, **J** did not fully understand the import of the terms of the assurance letters previously seen.

306. Mr Adamecsu also stated that he provided **J** - at the latter`s request - with a copy of the assurance documents (**15th November 2017** relating to him & **17th September 2017** relating to Mrs Raducanu) but claimed - unconvincingly in my opinion - to be unaware as to what use might be made of them by **J**.

307. During his evidence, Mr Adamescu decided to name **J** but not **X,** as his solicitors had undertaken to **X** that his identity would be protected. He added, however, that were he to be held in contempt of court for not providing **X**`s name, he would reveal it, but not otherwise. Mr Adamescu maintained that, in any event, he had only ever been provided with **X**`s first name.

308. I did not consider it appropriate to embark on a contempt of court exercise.

309. Mr Adamescu claimed to have carried out the Cotofana signature comparison exercise in respect of *the letter* only **after** Mr Owen QC had challenged its veracity in court on **31st January 2018**. This contradicts what he had stated in his adopted, signed proof of evidence.

310. In paragraphs 13 & 14 of his proof of evidence Mr Adamescu states that he …`*searched for and checked*` the (Cotofana) signatures **before** `*Ultimately I decided that I should ask for the document to be shown in court*` thus giving the clear impression that this checking occurred before he authorised *the letter* to be served and **before** Mr Owen questioned its legitimacy.

311. No statement or other information has been received from **J, X** or **C** to support any aspect of Mr Adamescu`s version of the above events in respect of *the letter*.

312. This court has been informed that a criminal complaint has been laid by the Romanian prison authorities with the Romanian prosecutor`s department in respect of matters relating to and arising from *the letter.*

313. A third bail application was then made (by Mr Keith QC), but was refused on the same ground as before (flight risk).

314. This court has learned that **Mr Justice Kerr** refused a further application for bail on **9th April 2018.** Mr Adamescu gave live evidence to the learned Judge during the course of that bail application.

315. The Lawtel note of that bail hearing records, inter alia, that the learned judge held .... ``*The applicant`s evidence about the circumstances in which the letter had been produced was unconvincing. It was not clear how and why he had relied on the supposed expertise of the newspaper staff to authenticate the letter and why they had validated it when its authenticity could easily have been tested. The district judge had been right to be sceptical about the applicant`s claim that he had accepted the document in good faith. It had allegedly been received by a newspaper which he owned and controlled and he was the only person who stood to benefit from its production. Although other explanations were possible, the likelihood was that the applicant had been involved in its production. That meant that the court could be satisfied that there were substantial grounds for believing that the applicant would fail to surrender to custody or interfere with witnesses or obstruct the course of justice. There was strong evidence to suggest that he was willing to resort to unlawful as well as lawful means to resist extradition.....``*

RULINGS ON CHALLENGES RAISED :

316. **s.21A Ruling :**
Albeit the parties have not made any particular submission on this issue, the court is required to consider s.21 A as this is an accusation request.

317. In relation to s.21 A **proportionality**, the allegations are serious and in the event that **Mr Adamescu** were to be convicted of like conduct in the UK, it is this court`s opinion that a prison sentence of some length may well result.
Furthermore if convicted in the requesting state, a sentence of imprisonment may well also result.
Extradition would not be s.21A disproportionate in this case.

318. In respect of s.21 A **compatibility**, having reviewed the evidence received, I take the view that extradition will be entirely compatible with RJ`s Convention rights.

319. **Romania** is a signatory to the European Convention on Human Rights and I am entirely satisfied that it will abide by its Convention obligations in relation thereto.

320. This court therefore finds that the provisions of s.21 A (both limbs) have been satisfied in this case.

321. **s.13(a) Ruling :**
The mischief that this section of the 2003 Act strives to prevent is the making of a request for extradition by reason of political opinions.

322. Under the provisions of s.13 the requested person has to demonstrate that there is a causal link between the proceedings themselves, or the likely prejudice, by reason of one of the identified grounds.

323. The former Prime Minister Victor Ponta (`Ponta`) was in post from **May 2012** to **November 2015**. In **June 2015** a criminal investigation was opened against him in respect of allegations of forgery, tax evasion and money-laundering.

324. The EAW in relation to Mr Adamescu was issued by **Judge Ovidiu Richiteanu Nastase** on **6th June 2016**, over 7 months **after** Ponta left office.

325. It is submitted on Mr Adamescu`s behalf that it would have been politically inappropriate for the Romanian authorities to have withdrawn the EAW after Ponta`s resignation, and that they would be not uncomfortable if this request were to be denied. I have received no convincing evidence to support that contention.

326. In further written information provided to this court, Laura Kovesi has stated that decisions to open criminal investigations are made by prosecutors without consideration of, or any influence from, any political factors.

327. Ms Kovesi strongly challenges the suggestion that she attended any meeting with political decision-makers and / or discussed sensitive matters pertaining to DNA investigations with any of those officials.

328. I return to one of the basic principles of extradition. It is a rebuttable presumption that requests are made in good faith and that, absent compelling evidence to the contrary, assertions made by or on behalf of requesting Judicial Authorities should be accepted by the requested State. The onus is on the defence to rebut the presumption with compelling evidence. I have not received such evidence in this case.

329. This court rejects the submission that this EAW was issued in order to punish Mr Adamescu for his political beliefs (whatever they might be), or for any other inappropriate politically-linked reason.

330. Contrary to what has been submitted by the defence, this court does not find that there is persuasive evidence to support the assertion that the decision to prosecute Mr Adamescu was taken at `*the highest political level*`.

331. Having given careful consideration to the submissions made, this challenge must **fail**.

332. **s.13(b) Ruling :**

So far as a s.13(b) risk that Mr Adamescu will suffer prejudice at

his trial, and / or be punished and / or suffer other ill-treatment by reason of `political beliefs`, the submissions made by the defence are **rejected** and this challenge must **fail.**

333. The European Commission`s Co-Operation and Verification Report published on **15th November 2017** states, inter alia, ...``*the 10 years` perspective showed that Romania had made major progress towards Co-Operation and Verification mechanism (`CVM`) benchmarks. ... The report confirmed that the Romanian judicial system had profoundly reformed itself and that the judiciary had repeatedly demonstrated its professionalism, independence and accountability.* .....``

334. Whilst it is acknowledged that there appears to have been some tension between recent Romanian Governments, Parliament and the Romanian Judiciary - accentuated by recent changes of Government (and Prime Ministers) - this court is not persuaded that any fallout that may have arisen will adversely affect Mr Adamescu`s trial.

335. Dr Bratu, an expert witness called by the defence, acknowledged that merely because Dan Adamescu had been convicted, this did not mean that Mr Adamescu would also be convicted. He added that individuals with established political profiles may face true indictments and have a fair trial in Romania.

336. Mr Breazu, another expert witness called by the defence stated that at trial, Mr Adamescu will have a different judge to the one who had presided over his father`s trial.

337. **Abuse of Process (Linked to s.13 challenges).**
At the same time as dealing with the s.13 challenges this court has borne in mind, and given consideration to, the parallel Abuse of Process submissions linked thereto.

338. This court **rejects** the Abuse of Process challenge. This court finds that there is no - or insufficient - evidence to support the contention that there is or has been any usurpation of the statutory regime of extradition either in respect of the issue of the

EAW or such as would or might lead to prejudice or unfairness to Mr Adamescu at his future trial.

339. **Article 6 Ruling :**

Mr Adamescu submits that he will not receive a fair trial in the event of his return. Extradition may be incompatible with Article 6 if there are substantial grounds for believing that there is a real risk that he will suffer a `*flagrant denial of justice*`.

340. As previously stated, this being a Part 1 request, there is a (rebuttable) presumption that EU Member States will abide by their Convention obligations, inter alia, to provide the extraditee with a fair trial.

341. The type of evidence needed to rebut this presumption is akin to an international consensus, such as a significant volume of reports from the Council of Europe, the UNHCW and NGOs. Such evidence has not been produced in this case.

342. The reality in this case is that :

(i) The allegations against Mr Adamescu are not stale.

(ii) It is not suggested that Mr Adamescu no longer has available to him evidence or witnesses whom he would wish to call in support of his defence.

(iii) Mr Adamescu will be able to give evidence and call evidence in support of his defence.

(iv) In Romania Mr Adamescu has the benefit of the presumption of innocence.

(vi) The Romanian prosecuting authorities have the burden of proving the case against him to the requisite standard.

(vii) Mr Adamescu will doubtless be able to continue to avail himself of the experienced Romanian lawyers of his choice who have robustly looked after his interests to date and who would appear very capable of putting forward a strong defence on his behalf.

(viii) The Romanian penal code allows for a right to appeal to the Appeal Court and, if appropriate, thereafter, to the Romanian Supreme Court.

343. This court is unaware of any case where a UK court has refused extradition to a Part 1 country as a result of a successful Article 6 challenge. However, this does not absolve this court of

its obligation to consider any such challenge with appropriate care and necessary consideration.

344. Having taken account of the evidence received both in writing and orally, as well as the detailed submissions made by the parties, I am not persuaded that the requested person has vaulted the hurdle necessary to succeed with this challenge, and accordingly this challenge must **fail**.

345. **Article 3 Ruling :**

During the course of these proceedings, the Romanian authorities have provided further information and a number of written assurances - relating to prison conditions - specific to Mr Adamescu`s detention, in the event of his return to Romania. Perhaps the most relevant documents supplied by them are those supplied in **November 2017**.

346. The letter of **15th November 2017** states that Mr Adamescu will be transported from the airport to the.....
`apprehension and preventive custody centre. He will be housed in a room `with an area of 8.66 sq.m (which does not include the bathroom area) for 2 places. Hence, the person concerned will be accommodate (sic) in a room with an individual space of 4.333sq.m including a bed and proper furniture`. Photographs of the proposed cell area have also been provided by the Romanian authorities.

347. While Mr Adamescu does not raise s.25 of the 2003 Act (`health`) as a stand-alone challenge, he submits that his health issues are an important factor to be taken into account when this court considers the Article 3 challenge.

348. Having received expert testimony from Prof. Eastman and Dr Joseph I am not persuaded that such health difficulties that Mr Adamescu may have, add any significant weight to this challenge.

349. The production of *the letter* of **22nd December 2017** clearly has damaging repercussions for Mr Adamescu, in respect of this challenge in particular.

350. The Judicial Authority has been faced with a myriad of complaints about the anticipated prison conditions that are expected to be provided to Mr Adamescu in the event that extradition were to be ordered.

351. My attention has not been drawn to any authority under English law that demonstrates that the Romanian authorities are, in fact, required to provide an assurance in respect of detention for a requested person whose return is sought to face trial (as opposed to serve a sentence of custody).

352. Defence complaints about prison conditions continued to be raised, at regular intervals, from an early stage in these proceedings and showed no sign of abating up to the final day of the hearing in this case.

353. In my opinion, the Romanian authorities have done their utmost to deal with these criticisms by providing a number of assurance documents, during the course of these protracted proceedings.

354. Most recently the Judicial Authority has provided the following assurance documents ;
(a) A document dated **15th November 2017** from the Director General, National Prison Administration addressed to the Directorate for International Law and Judicial Cooperation at the Ministry of Justice in Romanian. This document establishes that :
(i) if Mr Adamescu were to be .... `` *Surrendered to a prison unit subordinated to the National Prison Administration, he shall be* ***ensured a minimum space of 3 sqm regardless of the prison where he shall be held in custody.*** `` (emphasis added).
(ii) Mr Adamescu will have appropriate Consular access
(iii) Mr Adamescu will have guarantees in relation to access to healthcare, including to private practitioners of his choice.
(b) A further assurance document dated **17th November 2017** from the Romanian Police General Inspectorate to the Directorate for International Law and Judicial Cooperation at the Romanian Ministry of Justice states :
(i) A person handed over at Bucharest airport will ... `` *be accommodated in the apprehension and preventive custody centre from the Ialomita County Police Inspectorate until the preventive measure lawfulness and thoroughness is verified .... . After that he will be immediately transferred to the penitentiary*

facilities subordinated to the National Administration of Penitentiaries``.
(ii) In Ialomita County, Mr Adamescu would be accommodated ``*In a room with an area of 8.66 sq m (which does not include the bathroom area), for 2 places. Hence the person concerned will be accommodated in a room* ***with an individual space of 4.333sqm,*** *including bed and proper furniture.*`` (emphasis added).

355. The Romanian authorities have also provided a substantial document responding to Mr Chirita`s report received on **24th November 2017**. It dealt comprehensively - and in this court`s view - satisfactorily with a number of criticisms made by Mr Chirita of prison conditions within the Romanian prison estate. There followed 2 further assurance documents dated **16th January 2018** which dealt with the available health care and detention in Ialomita County.

356. With regard to the letters said to have been provided by recent extraditees from the UK, stating that Romania has not abided by assurances previously given to the UK authorities, this court has to take into account that their evidence is not accepted by the Judicial Authority.

357. The CPS made enquiries to see if it could be arranged for those extraditees to be made available for cross-examination, but this court has been informed that Romanian law does not allow this to take place. Albeit those letters have been entered into evidence, I feel that I can only give them little weight, as the contents are not agreed and the Judicial Authority has not had the opportunity to cross-examine the authors.

358. I am satisfied that the Romanian authorities are not only well aware of their Convention obligations, inter alia, in respect of Article 3, but that they will abide by those obligations.

.....

359. This has been a very long case and one not without its complications. The hearing has lasted several days. I have carefully considered the plethora of evidence served and I have listened attentively to a number of live witnesses.

360. I have received and absorbed some **175** pages of written submissions from counsel during the course of the proceedings.

361. I am entirely satisfied to the necessary standard that there are no bars to this extradition request as provided for by the 2003 Act. I am also entirely satisfied that extradition will be compatible with Mr Adamescu`s Human Rights.

362. I therefore order the extradition of the Requested Person **Bogdan-Alexander Adamescu** to return to **Romania** to face the criminal prosecution in respect of the matters set out in the EAW previously referred to.

363. Extradition is ordered in accordance with the provisions of **s.21A(5)** of the **2003 Act**.

364. **Bogdan-Alexander Adamescu** is to be advised of his rights to seek permission to appeal against the decision of this court ordering his extradition.

District Judge (MC) John Zani

APPROPRIATE JUDGE

13 **APRIL 2018**