Neutral Citation Number: [2020] EWHC 2709 (Admin)

Case No: CO/1569/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/10/2020

Before:

LORD JUSTICE HOLROYDE
MR JUSTICE GARNHAM

- -

Between:

BOGDAN ALEXANDER ADAMESCU	**Appellant**
- and -	
BUCHAREST APPEAL COURT CRIMINAL DIVISION, ROMANIA	**Respondent**

- -
- -

Hugo Keith QC and Ben Watson (instructed by **Karen Todner**) for the **Appellant**
Tim Owen QC and Daniel Sternberg (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 14th, 15th, 16th & 17th July 2020

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JUDGMENT

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Lord Justice Holroyde and Mr Justice Garnham:

1. Bogdan Alexander Adamescu ("the appellant") is alleged to have committed two offences of bribing judges in Romania in 2013. On 6 June 2016 the Bucharest Criminal Appeal Court, Criminal Division issued a European Arrest Warrant ("EAW") against him. It was certified in this country by the National Crime Agency on 9 June 2016, and the appellant was arrested four days later. On 13 April 2018, after lengthy proceedings under Part 1 of the Extradition Act 2003 ("the Act"), District Judge Zani ("the DJ") ordered that the appellant be extradited to Romania. The appellant appeals against that decision. This is the judgment of the court.

2. The appellant was born in Bucharest in 1978. He is the son of the late Daniel Adamescu ("Mr Adamescu senior"), a prominent Romanian entrepreneur and businessman. When the appellant was a child, the family moved to Germany, where he was educated. In 2006, he joined his father's business in Romania. At that time, Mr Adamescu senior had controlling interests in an influential newspaper called Romania Libera and in Romania's largest insurance company, Astra, both those organisations being part of the "Nova Group".

3. The appellant contends that his prosecution in Romania is not the product of an ordinary, evidence-based criminal process: it is politically motivated and has been politically directed. This contention lies at the heart of the appellant's case. It is therefore convenient to begin by sketching an outline of some relevant features of the Romanian political and judicial systems. We do so by drawing upon some of the many reports contained in the voluminous papers which were placed before us.

Romanian political and judicial systems:

4. Romania is a constitutional republic with a democratic, multiparty parliamentary system. The bicameral parliament consists of the Senate and the Chamber of Deputies, both elected by popular vote. The head of government is the Prime Minister. The Head of State is the President. Romania has been a member of the Council of Europe since 1993, and joined the European Union (hereafter, "EU") in January 2007.

5. Between 2012 and 2014, the President of Romania was Mr Traian Basescu. Mr Adamescu senior was a friend and supporter of Mr Basescu. In 2014, Mr Klaus Iohannis, who ran for office on an anti-corruption agenda, was elected President.

6. From May 2012 to November 2015, the Prime Minister of Romania was Mr Victor Ponta of the Social Democratic Party (the "PSD"). He was succeeded, after a short interregnum, by Mr Dacian Ciolos, an independent, who served from November 2015 to January 2017. He was followed by a series of Prime Ministers who were members of the PSD.

7. Article 126(1) of Romania's Constitution provides that -

> "Justice shall be administered by the High Court of Cassation and Justice, and the other courts of law set up by the law."

8. Article 124 guarantees that

> "Judges shall be independent and subject only to the law."

9. Judges are appointed by the President of Romania. By Article 125(1), they –

> "shall be irremovable, according to the law… The appointment proposals, as well as the promotion, transfer of, and sanctions against judges shall only be within the competence of the Superior Council of Magistracy, under the terms of its organic law."

10. Prosecutors are part of the judicial authority. By Article 132, they –

> "shall carry out their activity in accordance with the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice."

11. Article 133 (1) provides that the Superior Council of Magistracy ("SCM") "shall guarantee the independence of justice". By Article 134, the SCM -

> "shall propose to the President of Romania the appointment of judges and public prosecutors, except for the trainees, according to the law" and "shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law."

12. Article 142 provides that the Constitutional Court shall be the guarantor for the supremacy of the Constitution. In this appeal, it has been common ground between the parties that the Constitutional Court has remained independent of the government of the day.

13. It has also been common ground between the parties that Romania has suffered significant corruption of public officials and that there have been various attempts at reform.

Corruption and reform:

14. In 2002, Romania established an anti-corruption directorate, the DNA. It carried out many investigations against leading politicians for alleged corruption and related offences, and a considerable number of ministers and members of the parliament were convicted. Romania received international praise for this fight against corruption. However, some politicians alleged misuse of powers by prosecutors and some judges.

15. In May 2013 Ms Laura Kovesi was appointed the DNA's chief prosecutor. She was removed from that office by the President in July 2018. In October 2019 she was appointed by the EU Public Prosecutor's Office as the first European Chief Prosecutor.

16. From March 2018 onwards, it emerged that there were secret protocols in existence between the SRI (the Romanian domestic intelligence agency), and the Romanian judiciary and prosecutors. At their annual meeting in September 2018, representatives of the Romanian courts of appeal expressed their concern for the observance of judicial independence as the basis of the right to a fair trial, and declared:

> "In this context, the representatives of the courts of appeal have taken note with concern about the existence of recently declassified protocols concluded between the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service, whose content raises issues on the potential violation of the constitutional rules regarding the separation of powers, the observance of criminal procedure rules and, implicitly, of the human rights.
>
> The representatives of the court of appeal therefore request the division for judges of the Superior Council of Magistracy to take the necessary steps to clarify whether the conclusion and classification of the protocols were such as to render the judicial independence vulnerable, independence that is essential for the completion of an act of justice within the limits of the law."

17. On the accession of Romania to the EU in 2007, a transitional measure, the Cooperation and Verification Mechanism ("CVM"), was set up to facilitate Romania's continued efforts to reform its judiciary and to step up the fight against corruption. It was said to represent a joint commitment of the Romanian State and of the EU. It will come to an end when benchmarks relating to judicial reform, integrity and the fight against corruption have been met. Under this mechanism, the overall functioning of the Romanian judiciary has been the subject of yearly assessment and recommendations.

18. In January 2017 the Commission undertook a comprehensive assessment of progress over the preceding 10 years. Romania had made major progress towards the benchmarks, and had put into place a number of key institutions and much important legislation. This report confirmed that the Romanian justice system had profoundly reformed itself and that the judiciary had repeatedly demonstrated its professionalism, independence and accountability. Twelve recommendations were made with a view to resolving the remaining shortcomings.

19. A report published in November 2017 indicated that progress in addressing the recommendations had been affected by the political situation in Romania, with growing tensions between the parliament, the government and the judiciary. The government had adopted an emergency ordinance to decriminalise certain corruption offences and to propose a pardon law. That ordinance had later been repealed, but had "left a legacy of public doubts". Further concerns were expressed about recent proposals to revise laws in ways which could affect judicial independence. Although progress had been achieved on a number of recommendations since January, overall reform momentum had been lost, slowing down fulfilment of the remaining recommendations and risking a re-opening of issues which the January 2017 report had considered as fulfilled.

20. A report in November 2018 stated that recent developments had reversed, or called into question the irreversibility of, progress. The twelve recommendations made in January 2017 were no longer regarded as sufficient to bring the CVM to an end, and eight additional recommendations were made. The report called on Romania to demonstrate a strong commitment to judicial independence and the fight against corruption. It concluded that -

> "though progress has brought some benchmarks closer to the point of fulfilment, the Commission cannot yet conclude that any of the benchmarks are at this stage satisfactorily fulfilled. The Commission remains of the opinion that with loyal cooperation between State institutions, a political steer holding firm to past achievements and with respect for judicial independence, Romania will be able to fulfil the remaining outstanding CVM recommendations in the near future."

21. In October 2019 the Commission published a further report, the "Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism", which summarised the position as follows –

> "Ending the CVM would depend on fulfilling the recommendations in an irreversible way, but also on the condition that developments were not such as to clearly reverse the course of progress."

22. That report indicated that the Commission had had to raise concerns related to the rule of law on a number of occasions since November 2018. During that period there had been "little or no willingness" on the part of the Romanian authorities to engage with the recommendations. In May 2019 the Commission had raised the prospect that if the situation did not improve, it would have to take steps under the rule of law framework. There was, however, then a more positive development:

> "In June 2019, in a meeting with President Juncker and First Vice-President Timmermans, the Romanian Prime Minister committed not to pursue the controversial judicial reforms and to immediately resume dialogue under the CVM in order to progress on judicial reforms and the fight against corruption."

The report indicated that this changed approach –

> "… was also in tune with the results of a referendum in May 2019, called by the President of Romania, in which an overwhelming majority of Romanian citizens supported propositions to strengthen the safeguards against corruption and the arbitrary use of emergency ordinances."

23. We next summarise, in chronological sequence, events relevant to the allegations against the appellant.

Chronology of relevant events:

24. On 23 March 2012 Ms Monica-Angela Borza, who held office as a "judicial liquidator", was reported to the DNA for alleged involvement in bribery of a judge. Warrants were later granted on national security grounds for intercepts of her telephone communications. It is a matter of dispute whether evidence obtained by wiretap was used to found the EAW against the appellant.

25. In May 2012, Mr Ponta became Prime Minister of Romania.

26. Between June and December 2013, Daniel Onute (an in-house lawyer employed by Astra) and Daniela Firestain (Astra's finance manager) removed approximately €100,000 from the company's accounts. They did so by payments made against false invoices submitted to George Dumitru, a member of a law firm engaged by the Nova Group.

27. Payments were made (allegedly through Ms Borza) to two judges of the Bucharest Court, 7th Civil Division: in June and December 2013, sums of €10,000 and €5,000 were paid to Judge Ion Stanciu; and in December 2013, a sum of approximately €5,000 was paid to Judge Elena Roventa.

28. On 18 November 2013, the DNA commenced an investigation (under case number 316/P/2013) in relation to allegations of complicity in the bribery of a number of judges. The resulting report named those involved as including Judge Roventa, Judge Stancu, Ms Borza and Mr Onute. It outlined an allegation of bribery of Judge Stancu, saying that the purpose of the bribery was to secure judicial decisions favourable to Astra. Criminal proceedings under case number 316/P/2013 were commenced on 4 February 2014.

29. Between 22 January and 4 February 2014 an inspection of Astra was carried out by Romania's financial services regulatory body, the ASF. On 18 February 2014 Astra was placed under special administration. At a press conference two days later, on 20 February 2014, the Prime Minister Mr Ponta said this about Mr Adamescu senior:

> "Let me explain you one thing. The President has a big problem related to a big firm, led by Mr Adamescu, to whom he is very close and was very close in all electoral campaigns. I think that the law must decide, and whoever embezzled funds, must pay, even if they embezzled them from some electoral campaign"

30. On 29 February 2014 an investigation into corruption and abuse of office at Astra was commenced. On 17 March Mr Ponta made a public statement in which he said –

> "Those guilty at ASF should resign. The others should not be afraid to go ahead with the case Astra-Adamescu, because that really big bomb there is that hundreds of millions of euros have been embezzled at Astra through Mr Adamescu."

31. On 13 May 2014 Mr Onute is said to have self-reported to the DNA his involvement in the bribery of Judges Stancu and Roventa, which led to a widening of the criminal investigation. On the following day, telephone conversations between Mr Onute and Ms Firestain, and between Mr Onute and Ms Borza, were intercepted. On 15 May Mr Onute made a statement to the DNA and was granted immunity from prosecution. He told investigators that he had paid the bribes to the two judges at the behest of the appellant and of Mr Adamescu senior. Ms Firestain also made a statement, in which she said that Mr Dumitru had told her that the bribery was instigated by the Adamescus: she was not granted immunity, but has not been prosecuted.

32. On 19 May 2014 Mr Dumitru committed suicide. A few days earlier, he had made a statement which did not incriminate either the appellant or Mr Adamescu senior.

33. On 21 May 2014 Mr Adamescu senior's home, and the offices of Astra, were searched. On the following day, the appellant was summonsed to be questioned as a suspect.

34. On 24 May 2014 the Prime Minister Mr Ponta said this about the President and Mr Adamescu senior:

> "Traian Basescu is one of the main beneficiaries of Mr Adamescu's media support. Mr Adamescu owns a newspaper that fights a lot against corruption, I think the man who sponsored a corrupt system for so many years is exactly the owner of a newspaper that talks about the fight against corruption ... I am convinced that soon we will find out even more from the prosecution service ... and I am glad that slowly, as the mandate of Mr Basescu is nearing its end, we're getting to know more and more and measures are being taken on those violations of the law, maybe the end of the mandate is a coincidence . . . Traian Basescu is very upset, it's one of his friends and sponsors."

35. Mr Adamescu senior was arrested on 5 June 2014. On 24 June he was sent for trial on an indictment in case number 316/P/2013 which accused him and others (including Ms Borza and Judge Stanciu) of two offences of complicity in bribery. The appellant (who was not then in Romania) was not charged but was named in the indictment as a suspect.

36. On 1 September 2014 the appellant's representatives in London wrote to the police, expressing his willingness to "co-operate with the court process", and to "attend at Westminster Magistrates' Court or at a convenient police station voluntarily" if an EAW was issued. At that stage, there were no criminal proceedings against the appellant.

37. Mr Adamescu senior's trial began on 10 October 2014. Both Mr Onute and Ms Firestain gave evidence against him. On 2 February 2015 he was convicted of the charges of complicity in bribery and sentenced to custody for a total term of 3 years 4 months.

38. Judges Stanciu pleaded guilty and Judge Roventa was convicted of offences of accepting bribes. They were sentenced to terms of imprisonment.

39. On 25 August 2015 the Nova Group (on the appellant's instructions) notified Romania of its intention to commence proceedings before the International Court for Settlement of Investment Disputes. Two days later the ASF lifted the special administrative regime which had been in place in respect of Astra, and revoked Astra's licence to act as an insurer.

40. On 22 September 2015 the allegations of bribery against the appellant were severed from case number 316/P/2013 and became the subject of a separate case under number 577/P/2015. The prosecutor in that case, Mr Matei, was also the prosecutor in a case against Astra under case number 578/P/2015.

41. In early November 2015 Mr Ponta resigned. Mr Ciolos became Prime Minister of Romania.

42. On 11 December 2015 a summons was issued against the appellant in case number 577/P/2015, requiring his attendance on 22 February 2016.

43. On 15 December 2015 the Nova Group (again on the appellant's instructions) made a second notification to Romania of its intended arbitration proceedings.

44. On 16 December 2015 the DNA issued a request to Monaco for mutual legal assistance seeking to summons the appellant there. The appellant was not present, and was therefore not served.

45. On 25 February 2016 the DNA issued a second summons requiring the appellant to attend for questioning. They purported to serve this on the offices of Nova in Romania, but such service is said by the appellant to have been invalid because he was not then resident in Romania.

46. On 7 March 2016 the DNA commenced criminal proceedings against Mr Adamescu senior and the appellant, alleging abuse of office in relation to Astra. On 22 March the DNA commenced criminal proceedings against the appellant in relation to the bribery allegations. His status changed from "suspect" to "defendant", and it was asserted (wrongly, he contends) that he had "absconded from the criminal prosecution".

47. On 25 March 2016 the DNA applied to the Bucharest Court of Appeal for preventative detention of the appellant, in relation to the bribery proceedings, on the basis that it was "necessary in remove a state of danger for the public order", and that the appellant had absconded. Ms Kovesi appeared on television and made observations about the appellant's case.

48. On 4 May 2016 a judge issued a warrant for the appellant's arrest. The appellant's appeal against that order was granted by Judge Nita on 19 May 2016, but notice was given at 12.59 that day that there would be a new hearing of the application for a warrant at 13.30. That hearing took place before Judge Matei. Judge Nita's decision was meanwhile drawn up and sent to the police at 1539. At 1540 Judge Matei issued a new warrant for the appellant's detention. An appeal against that fresh warrant was dismissed on 26 May 2016.

49. On 27 May 2016 Mr Adamescu senior's appeal was dismissed by the High Court of Cassation and Justice and his sentence affirmed.

50. The EAW against the appellant was issued on 6 June 2016, by Judge Nastase. The box for corruption has been ticked. The allegations are that the appellant:

    i) during June 2013 and December 2013, together with his father, by the means of and with the help of the witness Mr Onute, and of Ms Borza, remitted to Judge Stanciu the sums of 10,000 Euros in June 2013 and 5,000 in December 2013 in order to achieve a favourable result in respect of ongoing insolvency proceedings; and

ii) in December 2013, together with his father, by the means of and with the help of the witness Mr Onute, and of Ms Borza, remitted to Judge Roventa Romanian currency equivalent to the sum of 5,000 Euros in order to achieve a favourable decision in respect of ongoing insolvency proceedings.

The maximum length of the sentence which may be imposed for those offences is said to be "imprisonment from 6 months to 5 years".

51. The appellant was arrested on 13 June 2016. He appeared before a magistrates' court the following day. He was granted bail.

52. On 20 December 2016 an indictment alleging abuse of office was issued against Mr Adamescu senior in case number 578/P/2015. The case against the appellant was at that stage severed and given case number 929/P/2016.

53. Mr Adamescu senior died in custody on 24 January 2017. A post-mortem examination was carried out, but the results of the autopsy have never been disclosed to the appellant. The appellant believes that his father's death was caused by the inadequate conditions in which he was held.

54. We turn next to summarise the principal stages of the long course of these proceedings against the appellant.

The extradition proceedings against the appellant:

55. At the appellant's first appearance before the magistrates' court, on 14 June 2016, directions were given and the full hearing was fixed for 22 and 23 November 2016. That hearing date was later vacated after the appellant's representatives had served voluminous documentation to which the judicial authority needed to respond. A new hearing date was fixed for 24 April 2017 with an estimate of 5 days. That date also later had to be vacated.

56. On 26 July 2017 the DJ heard an application by the appellant to stay the proceedings. The substantive hearing was adjourned (subject to the outcome of the abuse application) to 27 November 2017. On 23 August 2017 the DJ gave his ruling refusing to stay the proceedings. The appellant sought unsuccessfully to challenge that ruling by way of judicial review.

57. The substantive hearing before the DJ began on 27 November 2017. A number of witnesses - not, initially, including the appellant himself - gave oral evidence. The hearing did not conclude within the 5 days which had been allowed, and was adjourned part-heard. At a continuation of the hearing on 2 March 2018, in circumstances which we will summarise later in this judgment, the DJ remanded the appellant into custody (where he remained until granted conditional bail on 6 March 2019). The hearing concluded on 23 March 2018. The DJ gave his judgment on 13 April 2018.

58. Not all the issues which were argued before the DJ remain in issue now. The appellant was granted permission to argue four grounds of appeal:

i) Ground 2: the DJ erred in deciding that the appellant's extradition was not barred by the first limb of the 'extraneous considerations' bar (section 13(a) of the Act);

ii) Ground 3: the DJ erred in deciding that the appellant's extradition was not barred by the second limb of the 'extraneous considerations' bar (section 13(b) of the Act);

iii) Ground 4: the DJ erred in deciding that the appellant's extradition would not be incompatible with his rights under Article 6 of the ECHR (section 21A(1)(a) of the Act);

iv) Ground 5: the DJ erred in deciding that the appellant's extradition would not be incompatible with his rights under Article 3 of the ECHR (section 21A(1)(a) of the Act).

59. Before saying more about the DJ's decision, and about the submissions on appeal, it is convenient to set the legal framework.

The statutory framework:

60. Romania is a category 1 territory, and Part 1 of the Act accordingly applies to this extradition request. Section 13 of the Act provides:

> "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, or
>
> (b) if extradited he might be prejudiced 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."

61. Section 21A of the Act provides:

> "(1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D") –"
>
> (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 specified 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 D was found guilty of the extradition offence;
>
> (c) the possibility of the relevant 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 extradition 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 these decisions –
>
> (a) that the extradition would be compatible with the Convention rights;
>
> (b) that the extradition would not be disproportionate…"

62. Article 3 of the ECHR provides:

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

63. Article 6 of the ECHR, so far as material for present purposes, provides:

> "1. In the determination of … any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

64. This appeal is brought pursuant to section 26 of the Act. This court's powers are set out in section 27:

> "(1) On an appeal under section 26 the High Court may—
>
> (a) allow the appeal;
>
> (b) dismiss the appeal.
>
> (2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.
>
> (3) The conditions are that—

> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.
>
> (4) The conditions are that—
>
> (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
>
> (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
>
> (c) if he had decided the question in that way, he would have been required to order the person's discharge.
>
> (5) If the court allows the appeal it must—
>
> (a) order the person's discharge;
>
> (b) quash the order for his extradition."

Relevant case law:

65. There is little dispute between the parties as to the principles to be applied. In relation to section 13(a), the burden was on the appellant to show on the balance of probabilities that the EAW was issued for the purpose of prosecuting or punishing him on account of his political opinions: see *Hilali v Central Court of Criminal Proceedings No. 5 of the National Court, Madrid* [2006] EWHC 1239 (Admin) at [62] and *Antonov & Barauskas v Prosecutor General's Office, Lithuania* [2-15] EWHC 1243 (Admin) at [20-21].

66. In the latter case, at [20], the court said –

> "Section 13(a) requires the court to assess the state of mind of the judicial authority at the time when the extradition request was made, so as to establish whether its purpose was to prosecute or punish for one of the 'extraneous' reasons: see *Slepcik v Governor of HMP Brixton* [2004] EWHC 1224 (Admin) at [24] per Maurice Kay LJ."

In *Slepcik* – a case concerned with the corresponding, and materially similar, provisions in section 6 of the Extradition Act 1989 – Maurice Kay LJ at [23] said that the court had to consider "the state of mind of the Czech authorities at the time of making the extradition request". It was common ground between the parties in the present case, and we agree, that the DJ was not limited to considering the precise moment when the

Romanian judge issued the EAW. He was required to have regard to the underlying process which led to the decision to issue the EAW, so as to consider whether that decision was driven by extraneous considerations.

67. In relation to section 13(b), the court is concerned with what may happen in the future if the requested person is extradited. The burden was on the appellant to show that there is a reasonable chance (alternatively expressed as reasonable grounds for thinking, or a serious possibility) that he might be prejudiced at his trial or punished, detained or restricted in his personal liberty on account of his political opinions: see *Hilali* at [62]. In *Antonov & Barauskas*, at [27], the court emphasised that a requested person must establish the necessary causal link, and that -

> "… the 'serious possibility' test applies to both what might happen and the reason for it happening."

68. In relation to Article 3, it was for the appellant to show that there were substantial grounds for believing that, if returned to Romania, he faces a real risk of treatment which violates Article 3: see *R (Ullah) v Special Adjudicator* [2004] 2 AC 323 at [24]. In *Elashmawy v Court of Brescia, Italy* [2015] EWHC 28 (Admin) at [49] the court summarised the principles applicable to Article 3 and in particular to prison conditions. They include the following:

> "… (3) Article 3 imposes "absolute" rights, but in order to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. In general, a very strong case is required to make good a violation of Article 3. The test is a stringent one and it is not easy to satisfy. (4) Whether the minimum level is attained in a particular case depends on all the circumstances, such as the nature of the treatment, its duration, its physical and mental effects and, possibly, the age, sex and health of the person concerned. In that sense, the test of whether there has been a breach of Article 3 in a particular case is "relative". ..."

69. In relation to prison overcrowding, the test stated by the European Court of Human Rights ("ECtHR") in *Ananyev v Russia* (42525/07 and 60800/08) is that each detainee must have an individual sleeping space in the cell, each must dispose of at least 3 sq m of floor space, and the overall surface of the cell must be such as to allow detainees to move freely between furniture. In *Mursic v Croatia* [2017] 65 EHRR 1, the ECtHR held, at [124], that where the personal space available to a prisoner falls below 3 sq m in multi-occupancy accommodation, a strong presumption arises of a violation of Article 3. The court went on to say, at [138], that the presumption may be rebutted if the following factors are cumulatively met: any reductions in the required minimum personal space are "short, occasional and minor"; such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and the applicant is held in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his detention.

70. The conditions of detention in prisons and police detention centres in Romania were the subject of a pilot judgment of the ECtHR, made final on 25 July 2017, in *Rezmiveş and others v Romania* (Applications nos. 61467/12, 39516/13, 48231/13 and

68191/13). The pilot judgment procedure allows the court to identify structural problems underlying breaches of Convention rights and to facilitate the speediest and most effective resolution of the dysfunction. The Court concluded that the conditions of the applicants' detention, also taking into account the duration of their incarceration, subjected them to hardship going beyond the unavoidable level of suffering inherent in detention and that there had therefore been a violation of Article 3 of the Convention. At [106] it noted that –

> "the first findings of a violation of Article 3 of the Convention on account of inadequate detention conditions in certain prisons in Romania date back to 2007 and 2008 (see *Bragadireanu v. Romania*, no. 22088/04, 6 December 2007, and *Petrea v. Romania*, no. 4792/03, 29 April 2008) and that, since the adoption of the judgments in question, there have been increasing numbers of such findings. Between 2007 and 2012 there were ninety-three judgments finding a violation. Most of these cases, like the present ones, concerned overcrowding and various other recurrent aspects linked to material conditions of detention (lack of hygiene, insufficient ventilation and lighting, sanitary facilities not in working order, insufficient or inadequate food, restricted access to showers, presence of rats, cockroaches and lice, and so on)."

71. The Court had issued Guidance in 2012 and the Committee of Ministers had twice assessed the Romanian response. Its conclusions –

> "only served to confirm the worrying state of affairs in the vast majority of Romanian police detention facilities and prisons, which continued to be beset by severe overcrowding and precarious material conditions."

72. The Court went on to note, at [109-110] –

> "109 More than four years after identifying the structural problem, the Court is now examining the present cases, having already found a violation of Article 3 of the Convention in 150 judgments on account of overcrowding and inadequate material conditions in several Romanian prisons and police detention facilities. The number of findings of Convention violations on this account is constantly increasing. The Court notes that as of August 2016, 3,200 similar applications were pending before it and that these could give rise to further judgments finding violations of the Convention. The continuing existence of major structural deficiencies causing repeated violations of the Convention is not only an aggravating factor as regards the State's responsibility under the Convention for a past or present situation, but is also a threat for the future effectiveness of the supervisory system put in place by the Convention … .
>
> 110 The Court notes that the applicants' situation cannot be detached from the general problem originating in a structural

> dysfunction specific to the Romanian prison system, which has affected large numbers of people and is likely to continue to do so in future. Despite the legislative, administrative and budgetary measures taken at domestic level, the structural nature of the problem identified in 2012 still persists and the situation observed thus constitutes a practice that is incompatible with the Convention."

73. The Court therefore considered the applications suitable for the pilot judgment procedure. It found both pre-trial detention and post-conviction detention to be in need of reform. As to the former, the Court noted that cells at police stations had been found to be structurally unsuitable for detention beyond a few days. The Romanian authorities should therefore ensure that any pre-trial detainees were transferred to a prison at the end of their time in police custody. As to the latter, the Court referred to data showing the occupancy rate for all Romanian prisons was around 150%, and that the majority of recent judgments concerned applicants who had a living space of less than 3 sq m, and in some cases less than 2 sq m, while serving their sentences. It noted a reform initiated by the Romanian government which could have a positive impact in reducing the prison population by focusing on a reduction in the maximum sentence for certain offences, the imposition of fines as an alternative to imprisonment and the positive effect of the probation system. It regarded this initiative as highlighting "the authorities' desire to find a solution to the problem of prison overcrowding". The Court left it to the Romanian authorities to take appropriate practical steps, but required the Romanian government to provide within six months a timetable for the implementation of appropriate general measures.

74. In *Grecu v Cornetu Court, Romania* [2017] EWHC 1427 (Admin), [2017] 4 WLR 139, extradition had been resisted on grounds relating to prison conditions. The respondent submitted, at [34], that there was a strong presumption that Romania, as a signatory to the Convention, was willing and able to fulfil its Convention obligations. The court however rejected that submission. At [48], Irwin LJ said:

> "I recognise the force of the presumption of compliance by a member state, and the requirement for "something approaching international consensus", in the language of the court in *Owda* quoted above. However, it appears to me that it is hard to apply a "presumption" in the face of the lucid test set out in *Mursic*. Moreover, the broad and critical conclusions as to Romanian prison overcrowding and conditions in *Rezmives* must constitute an authoritative and general comment on the regime. I can find no more ambiguity in those observations as to the general prison conditions in Romania, than in the formulation in *Mursic*. I do not see how the presumption of compliance can survive both, taken together."

On the facts, the court found that the assurances given by the respondent did not guarantee sufficient personal space in accordance with *Mursic*. It allowed the respondent an opportunity to give further undertakings.

75. In respect of Article 6, the appellant had to show substantial grounds for believing that, if extradited, there was a real risk that he would suffer a flagrant denial of a fair trial:

see *Soering v UK* (1989) 11 EHRR 439 at [119], *R v Special Adjudicator, ex parte Ullah* [2004] 2 AC 323 at [24]. In *Symeou v Public Prosecutor's Office, Patras, Greece* [2009] EWHC 897 (Admin), [2009] 1 WLR 2384 Laws LJ and Ouseley J observed, at [66]:

> "It would be very difficult to show that there was a real risk of a total denial of the article 6 rights through extradition and trial by a member of the European Union, and a signatory to the European Convention."

76. As to the approach to be taken by this court, guidance was provided in *Love v Government of United States of America* [2018] EWHC 172 (Admin), [2018] 1 WLR 2889. That case was concerned with Part 2 of the 2003 Act, but the statutory provisions as to appeal were materially the same as those in section 27 (see [64] above). At [25-26] the Lord Chief Justice, giving the judgment of the court, said:

> "25 The statutory appeal power in section 104(3) permits an appeal to be allowed only if the district judge ought to have decided a question before him differently and if, had he decided it as he ought to have done, he would have had to discharge the appellant. The words ""*ought* to have decided a question . . . differently" (emphasis added) give a clear indication of the degree of error which has to be shown. The appeal must focus on error: what the judge ought to have decided differently, so as to mean that the appeal should be allowed. Extradition appeals are not re-hearings of evidence or mere repeats of submissions as to how factors should be weighed; courts normally have to respect the findings of fact made by the district judge, especially if he has heard oral evidence. The true focus is not on establishing a judicial review type of error, as a key to opening up a decision so that the appellate court can undertake the whole evaluation afresh. This can lead to a misplaced focus on omissions from judgments or on points not expressly dealt with in order to invite the court to start afresh, an approach which risks detracting from the proper appellate function. That is not what *Shaw's* case or *Belbin's* case was aiming at. Both cases intended to place firm limits on the scope for re-argument at the appellate hearing, while recognising that the appellate court is not obliged to find a judicial review type error before it can say that the judge's decision was wrong, and the appeal should be allowed.
>
> 26 The true approach is more simply expressed by requiring the appellate court to decide whether the decision of the district judge was wrong. What was said in the *Celinski* case and *In re B (A Child)* are apposite, even if decided in the context of article 8. In effect, the test is the same here. The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed"

77. Where an appellant relies on fresh evidence, the test set out in section 27(4) applies. In *Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin), the court recognised that there may occasionally be cases where, in order to avoid a breach of a requested person's human rights, evidence should be admitted which a strict application of the section would not permit. The court went on, however, to say at [35]:

> "Even for defendants, the court will not readily admit fresh evidence which they should have adduced before the district judge and which is tendered to try to repair holes which should have been plugged before the district judge, simply because it has a Human Rights label attached to it. The threshold remains high. The court must still be satisfied that the evidence would have resulted in the judge deciding the relevant question differently, so that he would not have ordered the defendant's discharge. In short, the fresh evidence must be decisive."

The decision of the DJ:

78. We next summarise the decision of the DJ in relation to the issues which are now subject to appeal.

79. The DJ heard evidence from a number of witnesses:

i) Dr Patrick Basham, founding director of the Democracy Institute based in Washington, DC and an expert on the contemporary Romanian political system, who supported the appellant's case in respect of the challenges under section 13 and Article 6. Dr Basham suggested that the DNA had been overly dependent on the SRI, had become embroiled in politics and has as a result lost its independence and objectivity. He said in his report that a vigorous anti-corruption campaign remained a necessity, but the DNA was subject to political interference: in his view,

> "The unfortunate reality is that each political leader in turn views the campaign principally as a tremendous opportunity to punish their respective political, business and media opponents, and especially to settle old scores."

Dr Basham expressed the opinion that the appellant's case bore all the hallmarks of a politically-motivated prosecution. He acknowledged however that he had not reviewed the evidence presented by the Romanian authorities against the appellant.

ii) Dr Roxana Bratu, an academic research associate in Global and European Anti-Corruption Policies at University College, London, whose evidence was also concerned with potential political motivation and political interference with those prosecutions. She acknowledged that the DNA had prosecuted many evidentially strong cases and played a positive role in tackling corruption, but said that the reports of politically motivated prosecutions were "both too numerous and credible to be ignored". It was her opinion that there are likely

to be elements of political motivation and/or political interference in the prosecutions of Mr Adamescu senior and the appellant, because (a) Prime Minister Ponta wanted to discredit President Basescu by discrediting his associate Mr Adamescu senior, (b) the prosecutions made it possible to capitalise on the downfall of Astra, and (c) the Romanian authorities wished to weaken Romania Libera because of its support for President Basescu. She too acknowledged that she had not reviewed the evidence against the appellant, and she accepted that the conviction of Mr Adamescu senior did not necessarily mean that the appellant would also be convicted.

iii) Professor Norel Neagu, a Romanian lawyer, who gave evidence of potential political motivations for the prosecutions of the appellant and of Mr Adamescu senior. Amongst other things, he questioned the reopening of the case against the appellant in December 2015 after a delay of some 18 months. He suggested it was a knee-jerk reaction to the Nova Group's notification of arbitration proceedings against Romania.

iv) Mr Catalin Breazu, a Romanian lawyer who acted for Mr Adamescu senior in the Romanian criminal proceedings between February 2016 and January 2017. He gave evidence about his client's health issues whilst in custody.

v) Adriana Constantinescu, the appellant's partner, who ascribed Mr Adamescu senior's failing health in custody to the poor conditions in which he was detained. She spoke of incidents amounting to deliberate harassment by the Romanian authorities.

vi) Professor Nigel Eastman (called by the appellant) and Dr Philip Joseph (called by the respondent), consultant psychiatrists who gave evidence about the appellant's psychiatric condition. The opinion of the former was that the appellant suffers from bipolar affective disorder and exhibits symptoms of a major depressive illness, and that regular review and medication were very important. Professor Eastman noted that the appellant had expressed a long-standing reluctance to attend doctors and a preference to self-medicate with lithium. In his report of September 2016, Professor Eastman was satisfied from the limited medical history available to him that the appellant had in the past suffered at least two frank, and probably severe, manic episodes and frequent intermittent episodes of hypomania, usually when he stopped self-medicating with lithium. He diagnosed the appellant as currently exhibiting a major depressive disorder, and needing prophylactic medication to stabilise his mood. He would require monitoring to avoid any future relapse. If not adequately monitored and treated in prison, the appellant would be highly likely to deteriorate into a much more severe depressive state, with a risk of suicide. In further reports in November and December 2017, Professor Eastman diagnosed the appellant as continuing to suffer severe depression: he had improved significantly at a time when he hoped not to face extradition proceedings, but was now even more seriously depressed than he was when seen in 2017. His risk of suicide was higher, and very likely to be enhanced if he were extradited. He acknowledged that prisoners in this country do not have the right which Romanian law grants to prisoners to engage their own private doctor. Dr Joseph accepted that the information provided by the appellant and his partner was consistent with a diagnosis of bipolar affective disorder but this was not

supported by independent medical evidence. It was his opinion that the appellant is suffering from a moderately severe depression. He doubted the appellant's assertion that he had been self-medicating with lithium for more than 12 years, and noted that –

> "Mr Adamescu's professed reluctance to seek medical assistance from doctors appears to have completely evaporated after his arrest in these proceedings."

He also noted, in his second report, that the appellant recognised that his current low mood was related to his fear of extradition, and acknowledged that he would feel much better if he were not extradited.

vii) At a later stage of the proceedings, the appellant himself gave oral evidence.

viii) The DJ considered a report by Dr Radu Chirita, a Romanian attorney with long experience of human rights cases, including in relation to conditions of detention. He noted that the prison population in Romania had been decreasing over recent years, but there was still a problem of overcrowding and inadequate material conditions. A prison building programme had not been implemented by the government, and there were at present no funds for constructing new prisons. There was a shortage of medical staff and, in particular, many establishments do not have a psychiatrist. If extradited and held in custody before indictment, the appellant would almost certainly be held at Detention and Remand Centre No 1 in Bucharest, where Dr Chirita asserted the minimum detention standards set by the Romanian authorities "would be impossible to meet". If indicted and kept in custody, he is likely to be held at Rahova prison, or possibly Jilava prison. If convicted and sentenced to imprisonment, his place of detention would depend on the length of his sentence and on whether he was held in maximum security, closed, semi-open or open conditions. The establishments in which he would be likely to be held are Mărgineni, Giurgiu, Rahova or Jilava prisons. Because his medical condition does not require permanent hospitalisation, he would not be detained at one of the hospital-penitentiaries, and his condition would not influence the selection of the prison. Prisoners may request to be seen by a prison doctor, but can also request a consultation with an external doctor.

ix) The appellant also relied on statements of evidence by a number of serving prisoners in Romania: the appellant had wanted to call these witnesses to give oral evidence by videolink, but the Romanian authorities had said that was not possible. The witnesses were therefore not available for cross-examination

80. The respondent had provided a number of assurances in response to concerns raised as to the conditions in which the appellant would be held if returned to Romania. At [354] the DJ summarised the two most recent assurances:

> "(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)."

81. The DJ dealt in some detail with the circumstances in which the appellant came to give evidence. They relate to a document, copies of which were first provided to the respondent and to the court at a hearing on 31 January 2018. It purported to be a letter from the heads of the Romanian prison authorities to another department of the Romanian state, but with an accompanying envelope addressed to the appellant. Its contents contradicted the most recent assurance which had been given by the respondent as to the personal space which would be available to the appellant in custody in Romania, and referred to prison conditions which would almost certainly not be considered Article 3 compliant. As the DJ observed, its contents, if accurate, would be likely to shatter the credibility of the respondent in respect of the assurances provided. However, the respondent contended that the letter appeared to be a forgery.

82. The letter was said to have been sent to the Romania Libera newspaper. The original letter was never produced to the court, and the explanation eventually given by the appellant was that it had been destroyed, possibly by an employee of Romania Libera. The DJ said at [101] that he was satisfied that the letter was a fabricated document. Later, at [274], he set out features of the letter which pointed to that conclusion.

83. At a hearing on 1 March 2018 it was accepted by counsel on behalf of the appellant that the letter was not genuine, but it was said that the appellant had at all times acted in good faith and had believed the letter to be genuine. The case was adjourned so that

the appellant would have an opportunity to give evidence about the letter. The DJ remanded him in custody, finding that there were now substantial grounds for believing that he had become a flight risk. On 23 March 2018, the appellant gave evidence. The DJ found his explanations unconvincing, and at [293] concluded that the appellant -

> "was not a totally credible witness."

84. In relation to the challenge under section 13(a), the DJ identified the test to be applied as that stated by Scott Baker LJ in *Hilali v Spain* [2016] EWHC (1239 (Admin). At [31] he said –

> "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." [emphasis in the original]

85. When considering the expert evidence before him, the DJ referred to the evidence of Prof Neagu about potential political motivations in the prosecutions of the appellant and of Mr Adamescu senior, and in particular to a suggestion that the proceedings against the appellant was a "*knee jerk reaction to the contemplated arbitration proceedings commenced against Romania by the Nova Group*". The DJ continued, at [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".

86. Later in his judgment, at [323-327], the DJ noted that the EAW was issued on 6 June 2016, more than 7 months after the former Prime Minister, Mr Ponta, had left office (and at a time when he was facing an investigation, opened in June 2015, in respect of allegations of forgery, tax evasion and money laundering), and referred to information provided by Ms Kovesi to the effect that decisions as to the opening of criminal investigations are made by prosecutors in Romania without consideration of, or influence from, any political factors. Ms Kovesi had denied attending any meeting with political decision-makers, or discussing sensitive matters relating to DNA investigation with political officials. At [328-331], the DJ said –

> "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."

87. The DJ went on, at [332-336], also to reject the appellant's challenge in respect of section 13(b). He referred to the CVM report published by the European Commission on 15 November 2017, quoting a passage stating that –

> "the 10 years' perspective showed that Romania had made major progress towards 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… ."

The DJ acknowledged some recent tension between the Romanian government and the judiciary, but was not persuaded that it would adversely affect the appellant's trial. He rejected the submission that the appellant would suffer prejudice at his trial and/or be punished and/or suffer other ill-treatment by reason of his 'political beliefs'.

88. At [339-344] the DJ rejected the challenge in respect of Article 6, holding that the appellant had not produced evidence sufficient to rebut the presumption that Romania would abide by its Convention obligations. He summarised the reality of the case as being that the allegations against the appellant are not stale; the appellant would be able to give and call evidence in his defence; there is no suggestion that evidence or witnesses are no longer available to him; he has the benefit of the presumption of innocence; the Romanian prosecuting authorities have the burden of proving the case against him to the requisite standard; he will doubtless be able to continue to avail himself of experienced lawyers; and he will have a right of appeal to the Appeal Court and thereafter, if appropriate, to the Romanian Supreme Court.

89. As to Article 3 and prison conditions in Romania, the DJ (as we have noted) accepted Dr Joseph's scepticism as to the appellant's professed health issues, and did not find the appellant to have been a totally reliable witness. He was not persuaded that such health difficulties as the appellant may have added any significant weight to this challenge. He regarded the purported letter of 22 December 2017 as having damaging repercussions for the appellant, in particular in relation to this challenge. He referred to assurances given by the Romanian authorities on 15, 17 and 24 November 2017, and on 16 January 2018, quoting the passages from the assurances of 17 November which we have cited at [80] above. He found, at [353], that the Romanian authorities had done their utmost to deal, by those assurances, with the various criticisms made of the anticipated prison conditions. He found, at [355], that the detailed response provided by the respondent had dealt satisfactorily with Dr Chirita's criticisms of conditions of detention in Romanian prisons. He felt [357] that he could only give little weight to the statements of recent extraditees, who alleged that Romania had not abided by assurances given to the UK authorities in their cases, because that evidence was disputed by the respondent and the witnesses had not been available for cross-examination.

90. The DJ concluded, at [358], that he was 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."

91. The DJ's overall conclusion, at [361-362], was that he was satisfied to the necessary standard that there were no bars to the extradition request, and that extradition would be compatible with the appellant's human rights. He therefore ordered the extradition of the appellant to be returned to Romania to face criminal prosecution in respect of the matters set out in the EAW.

92. We turn now to the hearing of this appeal, which occupied nearly four days.

The appeal hearing:

93. In addition to the evidence which was before the DJ, this court was asked to receive a substantial volume of fresh documentary evidence, and the oral evidence of two former prisoners, extraditees from the UK, who described their experiences of prison conditions in Romania. The admissibility of this fresh evidence must be determined in accordance with the principles stated in S*zombathely City Court, Hungary v Fenyvesi* [2009] EWHC 321 (Admin) at [20], and in rule 50.20(6) of the Criminal Procedure Rules. Subject only to one exception, it was agreed between the parties that the court should consider all this evidence *de bene esse*, and rule upon its admissibility when giving judgment. The exception was the statement of Dr August Hanning, former German State Secretary of the Ministry of the Interior and Chairman of the German Federal Intelligence Service (the "BND"), which the respondent contended was in any event inadmissible because it contained double hearsay.

94. The appellant's solicitor has made a series of statements explaining why the proposed fresh evidence was not available below. We can summarise the fresh evidence by dividing it into three broad categories.

95. First, there is evidence relating to developments in Romania since the DJ's decision. This category includes evidence about the dismissal of Ms Kovesi from her position as the DNA's Chief Prosecutor, and her subsequent indictment in Romania. In February 2018 the Minister of Justice, Professor Toader, began a procedure to dismiss Ms Kovesi from her post, accusing her of having behaved in an excessively authoritarian manner and having repeatedly acted "discretionarily", thus endangering the anti-corruption drive and deflecting the DNA from its constitutional and lawful purpose. The President refused to direct Ms Kovesi's dismissal, on the ground that he could not do so by reason of "the lack of opportunity of the proposed measure". The Prime Minister then applied to the Constitutional Court, which ruled that the President had the power to dismiss Ms Kovesi and should do so. In March 2019 criminal proceedings were commenced against Ms Kovesi, accusing her of corruption.

96. The appellant also seeks to rely on further evidence relating to the role of the SRI in the criminal justice system: The appellant points to the disclosure of the secret protocols between the SRI and the Romanian courts, and relies on a report published in May 2018 by the National Union of Romanian Judges which concluded that the fight against

corruption, a necessary measure in Romania, had been "the ideal cover up for the SRI to gradually regain influence within the judiciary".

97. In addition, the appellant seeks to rely on various reports from monitoring bodies, a further report by Dr Basham and reports by Mr David Clark. Citing a variety of sources, Dr Basham states that corruption "is truly endemic" in Romania; that the DNA open investigations against judges who acquit defendants, which must create a climate of fear amongst judges; and that one of the most systemic problems in the Romanian judicial system is "the opaque alliance between the DNA and the SRI", who are both accused of "activities such as phone-tapping and falsifying evidence". Dr Basham refers to the May 2018 report by the National Union of Romanian Judges which asserts that the SRI exercises "overwhelming influence" upon the DNA's anti-corruption campaign and has been improperly involved with the judiciary, raising concerns about judicial independence. He repeats his opinion that he prosecution of the appellant bears "many of the hallmarks of an opportunistic, politically motivated undertaking" and says that this request for extradition was apparently made for the purposes of punishing the appellant on account of his, and his late father's, political opinions. He goes on to assert that the Romanian prison system is in a "literally dire state", quotes a commentator who suggests that the EAW system is open to abuse by governments who want to extradite their citizens for political motives, and concludes:

> "The Romanian government is persecuting Alexander Adamescu in a similar fashion to his father and other private sector actors whose success is viewed as a competitive threat to powerful political actors and institutional interests. Consequently, if extradited, almost certainly he would be tried unfairly; and, if convicted and incarcerated in the Romanian prison system, it is highly probable that he would suffer treatment and conditions that the European Court of Human Rights would consider inhumane."

98. Mr Clark has provided four reports. He is a freelance consultant and analyst with a particular focus on the countries of central and eastern Europe, and has been involved in Romanian affairs since the late 1990s. He too refers to the dismissal of Ms Kovesi, the SRI's alliance with the DNA and illegal involvement in the criminal justice system, and the existence of many secret protocols including one between the SRI and the Superior Council of Magistracy which raises concerns about judicial independence. He notes that some of the protocols have been declared unconstitutional by the Constitutional Court. He refers to the operational involvement of the SRI in the investigation of Mr Adamescu senior, especially in providing telephone intercepts - a role which, the appellant contends, can be inferred from evidence showing that the SRI applied for intercept warrants in relation to Ms Borza and the judges who were convicted of accepting bribes. In the Conclusion to his fourth report, Mr Clark states that the materials on which he has drawn point to the unavoidable conclusion that the DNA, working with the SRI, has abused its investigative authority to intimidate judges and improperly influence their decisions over a period of several years. He concludes that there are significant doubts about the extent to which the rule of law and judicial independence are respected in Romania.

99. Reliance is also placed on the October 2019 report of the European Commission, referred to at [21] above.

100. The appellant further seeks to rely on a statement by Dr August Hanning, which it is submitted demonstrates that the former Prime Minister Mr Ponta and his senior officials set out to ensure that Mr Adamescu senior was prosecuted and Astra destroyed. Dr Hanning is a German lawyer acting for the appellant. His statement sets out what is said to be evidence from a well-placed and very reliable source who, between December 2013 and May 2014, took notes at five secret meetings of the Special Directorate of the Government General Secretariat, which advises the Romanian prime minister on matters relating to national security and defence. According to these notes, three of the meetings were attended by Mr Ponta. At all five, high-ranking representatives of the SRI and the DNA were present, including Ms Kovesi. There was discussion of initiating criminal proceedings against Mr Adamescu senior, the appellant and the Astra company. Dr Hanning states that this source is not willing to be identified or to provide formal evidence. Copies of the notes of four of the meetings are produced, but are said to be incomplete because the source only noted "the information which was of most relevance for his professional duties". By way of example, the note of a meeting on 15 December 2013 begins as follows:

> "Ponta says we must deal and finish this business with DA and his son, their operations in Romania are intolerable, he's tired of these foreign agents financial and press support for Basescu, this has to stop, demands robust concrete and fast actions by DNA, police, SRI and ASF."

101. It is submitted that all this evidence goes to the issues of the motivation behind the prosecution of the appellant, and the risks that "the criminal justice system in Romania will be suborned in these proceedings".

102. The second broad category of fresh evidence relates to the appellant's mental health. It includes reports by Dr Juli Crocombe, Dr Utpaul Bose, Professor Simon Baron-Cohen and Dr Isaacs as to the deterioration in the appellant's mental health following his remand in custody in March 2018. Dr Crocombe, a consultant psychiatrist, diagnoses the appellant as suffering from autistic spectrum disorder ("ASD"), a condition not mentioned in the expert evidence before the DJ. Her opinion is that the uncertainty of his present position causes him great anxiety, which aggravates his depressive episode. There is an extremely high risk of suicide if he is extradited to Romania. Dr Bose, a consultant forensic psychiatrist, examined the appellant in February 2019. His opinion is that the appellant's depressive illness has worsened whilst in prison, with suicidal thoughts most of the time. That depressive disorder is compounded by the ASD diagnosed by Dr Crocombe, which made it much more difficult for the appellant to adjust to prison. Professor Baron-Cohen confirms the diagnosis of autism. On the basis of Dr Chirita's report he doubts whether Romanian prisons would meet the appellant's mental health care needs. He views the appellant as a vulnerable man at very high risk of suicide, and says that these protracted proceedings have had appalling consequences for his mood. Dr Isaacs, whose report was filed on the day before the appeal hearing began, spoke of a marked deterioration in the appellant's condition in recent weeks and a need for the appellant to receive frequent reviews by a psychiatrist skilled in the treatment of ASD.

103. There is also a further report by Dr Chirita, who in the light of Dr Crocombe's diagnosis has made enquiries about the ability of the Romanian prison estate to care for those suffering from ASD, and concludes that the appellant would not be provided with

appropriate care. In his opinion, it is unlikely that the appellant would receive appropriate support and management to minimise his anxiety, and so reduce the risk of suicide. He would not receive regular monitoring of his mental state and review of his medication by appropriately-qualified medical practitioners.

104. The appellant further seeks to rely in this regard on a report by the European Committee for the Prevention of Torture ("CPT") relating to an inspection of Romanian prisons in February 2018. This report notes positively the efforts invested in reform of the prison system since 2014, but records continuing overcrowding and poor material conditions. Many of the penal establishments visited failed to provide an adequate standard of health care, and the report recommended a number of changes and improvements. In particular –

> "The lack of psychiatric input was evident in all the prisons visited and inmates suffering from mental health illness had to cope with conditions of detention which impaired their mental and physical health."

The report further states that none of the prisons visited had any suicide or self-harm prevention programme in place.

105. The appellant further seeks to rely on evidence relating to the death in a Romanian prison of a former judge, Stan Mustata.

106. The third broad category of fresh evidence comprises further evidence relating to Romanian prison conditions.

107. Mr Stelian Chihaia gave oral evidence. He was extradited from England to Romania in January 2017 to serve a sentence of imprisonment for an offence of aggravated burglary. He said he was given an assurance of at least 3 sq m of personal space in closed conditions, 2 sq m in open or semi-open conditions, but the assurances were not kept. He was initially detained for 21 days in Rahova prison, Bucharest, sharing a room with 7 others. He gave an estimate of the size of the room. He said that conditions in the unheated cells were very bad, with dirty bed linen, bed bugs, impure drinking water and inadequate toilet and showering facilities. He was then transferred to Jilava prison in Bucharest, where again there was very restricted space, very poor, cold and unhygienic conditions and inadequate food. He occupied rooms which accommodated 21 prisoners in seven three-tier bunks. He gave a colourful account of an inspection by a commission from Brussels concerned with human rights, saying that the top tier of bunks was removed from each cell and placed in an internal yard, and prisoners were moved out of the cells, so as to conceal the fact of overcrowding from the inspectors. He claimed that there were 70-100 beds stored in the yard for the duration of the inspection, and that the inspectors were not allowed to look into the yard. Mr Chihaia also served part of his sentence in Vaslui and Focşani prisons, where there was insufficient personal space but the conditions were a little better.

108. In cross-examination, he did not accept the accuracy of official records showing that there had only been four days when his personal space was less than that which had been assured. He said that although he was given the guaranteed space on paper, he was not given it in real life. The official records showed his correct personal details, and, at least in part, correctly identified the rooms he had occupied, but "the figures left

a lot to be desired". Although he had never measured any of the rooms in which he had been accommodated, he said that his estimates were reliable because he is a builder by trade. He accepted that his lawyer had been able to visit him in prison, and he had been able to make statements to her, but he said he felt unable to make any complaints to the prison authorities about the conditions in which he was held, for fear of repercussions. He then accepted that his lawyer had in fact sent his statements to the ECtHR and that he had not suffered any repercussions. He said that his sentence should have been reduced by 102 days by way of compensation for the poor prison conditions, but he had in fact served that time.

109. Mr Cosmin Bagarea also gave oral evidence. He was extradited from England to Romania in September 2017. He was detained initially at Rahova prison and then at Timişoara prison. He said at Rahova he spent 21 days in a quarantine room which held 6 prisoners, and then for 2 days he was in semi-open conditions in a room which held 8. He said that there was at most 15 sq m of space in these rooms: he did not accept official records showing 19.5 sq m of space. He said conditions there were very dirty, the bedding was old and stained, there were bed bugs and the food was inedible. He was badly bitten by the bed bugs, but received little medical treatment. In Timişoara the food was a little better, but the cells were very crowded. He had been given an assurance that he would have at least 3 sq m of personal space, but he did not. He complained every day, but was told that it was not possible to provide better conditions.

110. In cross-examination Mr Bagarea accepted that his lawyer had been able to visit him in prison and take statements from him. He also accepted that his time in custody had been reduced by 48 days as compensation for the conditions of his detention: "space, food, everything". He agreed that Romanian law required that each prisoner have at least 4 sq m of personal space, but denied that the compensatory reduction in his sentence had been awarded for breach of that minimum: it was, he said, for breach of the assurance that he would have at least 3 sq m. He expressed amazement that the official records acknowledged a period of 3 days at Rahova when he was held in closed conditions with only 2.4 sq m of personal space. He did not agree that those were the only days when his guaranteed personal space was not provided to him. He agreed that at Timişoara he had been held in semi-open conditions, that he was not locked up all day and that the doors of the detention rooms were open for several hours a day, giving access to exercise yards. He also agreed that when remanded in custody in this country he had been locked in his cell for 23 hours per day.

111. We turn now to the submissions of the parties. Those on behalf of the appellant were very lengthy and detailed. Although we will not refer to all the many points which were raised, we have considered them all.

The submissions of the appellant:

112. The appellant's case is that his prosecution in Romania is the product of a politically-directed campaign instituted by Mr Ponta against Mr Adamescu senior, subsequently maintained by "politicised elements" in the DNA, the SRI and the ASF, and now directed against him. He accepts that Mr Onute and Ms Firestain removed money from Astra on the instructions of Ms Borza, and were involved in bribery of the two judges, but contends that they removed more money than was used in the bribery and themselves stole from the company.

113. Mr Keith QC and Mr Watson submit that the criteria in section 27(3), quoted above at [64], are satisfied: on the evidence he heard, the DJ ought to have decided each of the questions identified in the grounds of appeal in favour of the appellant, and ought accordingly to have ordered his discharge. In the alternative, the appellant submits that the criteria in section 27(4) are satisfied by the fresh evidence, most of which relates to events after the DJ's decision, and none of which was available at the hearing below.

114. Relying on the evidence of Dr Basham and Dr Bratu, it is submitted that the Romanian judicial system continues to suffer from serious systemic weaknesses. The SRI is a threat to judicial independence and the rule of law in Romania. The DNA is in practice overly dependent on the SRI, and insufficiently overseen by Parliament. Under Ms Kovesi it pursued a political agenda, and politically-motivated prosecutions remain common. Judges are under pressure to convict in accordance with the DNA's indictments, and a judge who acquits a defendant risks unwelcome attention. Mr Basham's opinion is that the prosecutions of the Adamescus may be explained by a wish to inflict financial harm on them, so as to neutralise their commercial and political influence, and to expropriate the assets of their company. The judge trying the case will know that it is a DNA/SRI prosecution, and the appellant will therefore be at risk of an unfair trial. The appellant relies on the observation of Laws LJ in *Brown v Government of Rwanda* [2009] EWHC 770 (Admin) at [68]:

> "Moreover, the question whether a court is independent and impartial cannot be answered without considering the qualities of the political frame in which it is located. If the political regime is autocratic, betrays an intolerance of dissent, and entertains scant regard for the rule of law, the judicial arm of the State may be infected by the same vices; and even if it is not, it may be subject to political pressures at the hands of those who are, so that at the least the courts may find it difficult to deliver objective justice with even-handed procedures for every litigant whatever the nature of his background or the colour of his opinions. We must take care, of course, to avoid crude assumptions as to the quality of a State's judiciary based on the quality of the State's politics. There are, thankfully, many instances of independent judges delivering robust and balanced justice in a harsh and inimical environment; but it takes courage and steadfastness of a high order."

115. Romania Libera is described as supporting the rule of law, free speech and liberal values. It was critical of the PSD, and in particular of Mr Ponta, and Mr Adamescu senior was a supporter of President Basescu, to whom Mr Ponta was hostile. Mr Ponta made public pronouncements which presupposed the guilt of Mr Adamescu senior and the appellant. It is submitted that the evidence before the DJ showed that Mr Ponta directed prosecutors to prosecute his opponents and their supporters. Following the death in custody of Mr Adamescu senior, the appellant has been instrumental in bringing arbitration proceedings against Romania and remains in control of Romania Libera. Although Mr Ponta left office before the prosecution of Mr Adamescu senior began, it is submitted that the failings of the Romanian criminal justice system are systemic.

116. As evidence that his prosecution is politically motivated, the appellant points to the fact that the case against him, having lain dormant since June 2014, became active again from September 2015, very shortly after Nova gave notice of its intention to commence arbitration proceedings against Romania. It is submitted that the DNA wrongly treated the appellant as an absconder, and criticism is made of the manner in which arrest warrants were granted in March and May 2016. The appellant further points to what he submits is the lack of evidence against him: it is submitted that the only direct evidence that he knew of, or participated in, bribery is that of Mr Onute, an unreliable witness who extracted far more money from Astra than is alleged to have been used to pay bribes, and whose covert recordings of conversations with the appellant do not in any event include anything which incriminates the appellant. These features, it is submitted, are wholly inconsistent with an objective and evidence-based decision to prosecute the appellant. Reliance is placed on the views of Mr Breazu that the appellant would not receive a fair trial and that there is no realistic prospect that Mr Onute (who did not attend at the hearing of Mr Adamescu senior's appeal) would in fact attend to give evidence and face cross-examination.

117. The evidence of Mr Breazu as to the very bad conditions in which Mr Adamescu senior was held in custody, and as to what is said to have been a deliberate disregard for his health, is relied on as a further indication that extraneous considerations lie behind the prosecution. So too is the evidence of Ms Constantinescu.

118. It is submitted that the DJ's reasons for rejecting the appellant's submissions were inadequate. The judgment fails to refer to important points, and gives disproportionate weight to the letter of 22 December 2017. At [31] of his judgment (quoted at [84] above) the DJ made an error of law by limiting the test to the state of mind of the judge who issued the EAW instead of considering whether the criminal proceedings underlying the extradition request were driven by extraneous considerations. It is submitted, relying in particular on *Antonov and Baranauskas*, that the real issue is whether the EAW was the product of a tainted process. There was overwhelming evidence, wrongly rejected by the DJ, that the whole prosecution process was infected by political considerations. No adequate reasons were given for rejecting the opinion of Dr Basham and Dr Bratu, and the DJ failed to address the issues raised by them about the DNA or the issues raised by Mr Breazu's evidence that Mr Onute would not be available at trial to be cross-examined. In the passage quoted at [85] above, the DJ made an error as to the date when notice was given of the intended arbitration proceedings and therefore failed to recognise the significance of the timing of the reactivation of criminal proceedings against the appellant.

119. It is submitted that the DJ also fell into error in his quotation (see [87] above) from the November 2017 report of the Commission: he wrongly treated the comparatively favourable report of January 2017 as if it represented the current position in November 2017, and thus ignored the Commission's concerns (see [19] above) as to the loss of reform momentum during 2017.

120. Thus, it is submitted, there was compelling evidence before the lower court that the prosecution and extradition of the appellant have been and remain based on extraneous, political considerations. Mr Keith accepts that the question for this court is whether the DJ's decision was wrong, and that a close textual analysis is not appropriate; but he submits that the incorrect approach adopted by the DJ in failing to consider relevant

matters should mean that this court is free of the usual obligation of deference towards the findings below.

121. As to section 13(b), Mr Keith points out that the appellant is only required to establish a serious possibility, or reasonable chance, of the prohibited consequences. Further, criminal proceedings may be motivated by political considerations even if they relate to actual offending. It is submitted that there was clear evidence before the DJ that the appellant would suffer prejudice. As to Article 6, which overlaps with but is distinct from the section 13(b) considerations, it is submitted that the evidence before the DJ showed substantial grounds for believing that there is a real risk that the appellant if extradited would be exposed to a flagrant denial of a fair trial, because of the lack of judicial independence and the extent of political interference in prosecutions in Romania. The conduct of the proceedings against Mr Adamescu senior, and the proceedings thus far against the appellant, support the conclusion that there will be no fair trial in a case which is political and which will be tried in a criminal justice system which is politicised and corrupt. Mr Onute's evidence would be the sole and decisive evidence against the appellant; but Mr Breazu's evidence (unchallenged) was that Mr Onute will not in fact attend the appellant's trial, and the trial will therefore not be compatible with Article 6: see *Horncastle v UK* (2015) 60 EHRR 31. In those circumstances, it is submitted, the evidence before the DJ showed that the appellant would be prejudiced by political considerations at any trial in Romania, and that there are substantial grounds for believing he would suffer a flagrant denial of justice.

122. As to Article 3 and the issue of Romanian prison conditions, it is submitted that the evidence before the DJ showed substantial grounds for believing that there would be a contravention of Article 3 by reason of overcrowding and general prison conditions and because of the real risk that adequate health care would not be available. It is further submitted that the effect of *Rezmiveş*, *Grecu* and later cases is that the court must ensure that any assurances given by Romania as to prison conditions are reliable, and will cover the whole of any period of detention. It is submitted that the DJ failed adequately to address the law in this regard, and failed to give adequate reasons for rejecting the appellant's contention that the twelve "overlapping and mutually inconsistent" assurances given by Romania during these proceedings did not meet the risk that the appellant would be detained in conditions which violate Article 3. In particular, he did not address the point that the assurances were deficient in relation to period post-indictment but pre-trial. The DJ had also failed, unfairly, to give appropriate weight to the evidence of the serving prisoners, who had been prevented from giving oral evidence for reasons which the respondent no longer sought to maintain. It is accepted that in Part 1 cases there is an assumption of good faith on the part of the requesting judicial authority, but it is submitted that assurances given by Romania are open to doubt because extraneous considerations apply.

123. It is next submitted, further and in the alternative, that the proposed fresh evidence supports the appellant's case. As to the first of the three categories of fresh evidence which we have summarised above, Mr Keith submits:

    i) The fresh evidence relating to Ms Kovesi should lead the court to conclude that the DJ was wrong to say that she should be presumed to have acted in good faith and that her statements should therefore be accepted. The nature of the criticisms made of Ms Kovesi, and the fact that she was dismissed and later

prosecuted, show that there is a real risk that the criminal justice system in Romania has become perverted.

ii) The fresh evidence relating to the SRI strongly supports the appellant's case that the SRI has been improperly involved in the case against him. It is submitted that the SRI was directly involved in the investigation of the bribery allegations against the appellant, because it was the body authorised to carry out intercepts, or to receive the product of them; yet the Romanian authorities continue to deny the role of the SRI in this prosecution, just as they continue to rely on the tainted evidence of Mr Onute. Indeed, faced with a direct denial in further information provided by the respondent, Mr Keith submits that the further information is untruthful in this respect.

iii) There is now "a mass of material" showing that human rights standards in Romania have materially diminished, and the independence of the Romanian judiciary has been further undermined, since the hearing before the DJ. The prospects of the appellant receiving a fair trial have accordingly also diminished.

124. In relation to the second category of fresh evidence, Mr Keith acknowledges Dr Joseph's different opinion, but points out that both expert witnesses before the DJ agreed that the appellant has bipolar disorder, has experienced manic episodes in the past and currently suffers depression. The difference between them was as to the severity of the depressive episode and the seriousness of the risk of suicide. The fresh evidence shows that the appellant's remand in custody had a severe impact on his mental health, such that it is clear that custody gives rise to acute risks including of suicide. The general inadequacy of prison conditions in Romania is therefore important. It is submitted in particular that no assurance has been given that an appropriately-qualified psychiatrist will be available to the appellant in the Romanian prison estate. The assurances which have been given are dismissed by Mr Keith as "boiler plate", and he submits there is no guarantee that the necessary resources will in fact be available at whichever prison holds the appellant. Moreover, Dr Chirita's unchallenged evidence before the DJ was that there is no psychiatrist at Ialomita prison, where the appellant is likely to be held for a time before any transfer.

125. It is submitted that the effect of the third category of fresh evidence is to show that the Romanian prison estate still fails to meet minimum Article 3-compliant standards, and that the Romanian authorities have repeatedly failed to comply with assurances which they have given to English courts. Although a general assurance has been given that at least 3 sq m of personal space will be available to the appellant in any prison, and the appellant will be transferred to a prison when indicted, it is not clear whether this assurance extends to the period of detention in police custody before the appellant is indicted.

126. Mr Keith submits that the prison estate in Romania is still significantly overcrowded. He submits that there are real reasons to doubt the efficacy and reliability of the assurances which have been given: he relies on the evidence of the two former prisoners as to breaches of the assurances given in their cases, the repeal in 2019 of the law which formerly provided compensation for prisoners held in overcrowded conditions, and the absence of any specific assurance in relation to one of the prisons in which the appellant is likely to be held. He further submits that the medical facilities are wholly inadequate for detainees with mental health illnesses who are at high risk of suicide: Ialomita

provides no facilities, Rahova has no hospital and other prisons lack adequate facilities. He challenges the DJ's acceptance of assurances given in this regard: it is necessary to focus on the specific case, and there is a real risk that the appellant will receive inadequate health care.

The submissions of the respondent:

127. For the respondent, Mr Owen QC and Mr Sternberg dispute the appellant's assertion that the evidence against him is weak, and point to the further information which the Romanian authorities have provided in response to the proposed further evidence. They emphasise however that it was not for the DJ, and is not for this court, to assess the strength of the evidence. The question for this court is whether the DJ's decision was wrong. It is submitted that the DJ, presented as he was by the appellant with "a morass of evidence", addressed the key material with sufficient care, analysed and evaluated the evidence and reached reasonable conclusions. There is no basis for this court to interfere with those conclusions. It is further submitted that the substantial quantity of fresh evidence on which the appellant seeks to rely takes the case away from being an appeal and turns it into an application to retry the extradition hearing.

128. Although it will ultimately be for a trial court to determine whether the appellant is guilty of the offences charged against him, it is submitted that the grounds of appeal must be considered in the context of a clear, and potentially compelling, case against him. Mr Owen accepts that a prosecution may be politically motivated even though there is objective evidence to support it; but, he submits, an absence of objective evidence might strengthen an inference of political motivation. Here, in addition to the evidence of Mr Onute, there is the fact that one of the two judges whom the appellant is said to have bribed pleaded guilty and the other was convicted after a trial. The allegations against the appellant are not affected by political changes in Romania or by the emergence of the secret protocols. The appellant can derive little support for his case from either Dr Bratu or Dr Basham because neither of them had considered the evidence against him. Dr Basham accepted in cross-examination that, before forming a view as to whether a prosecution is genuine, it would be critical to know whether there was any evidence in support of the charge. Mr Matei, the Head of Office of the DNA, has provided a statement saying unequivocally that the prosecution of the appellant was based exclusively on the evidence examined in the case. Similarly, further information has been provided which states clearly that there has been no wire-tapping order issued on the application of the SRI in case 577/P/2015. Wire-tapping orders have been issued in case 929/P/2016 in which the appellant is a suspect (see [52] above); but that case is not the subject of these extradition proceedings, and no evidence relevant to that accusation against the appellant has emerged from the intercepts. In any event complaints about political motivation, the suggested involvement of the SRI, allegations of unlawful wire-tapping, the secret protocols and the sufficiency of the evidence can all be put forward by the appellant at a trial. Although the DJ expressed his findings briefly, he clearly accepted the detailed submissions made by the respondent to the effect that these two witnesses were unable to show any systemic problem. Romania is clearly not incapable of providing a fair trial. The appellant would be tried on the evidence and would have a right of appeal if convicted. The case against him does not depend solely on Mr Onute, and, in any event, Mr Breazu did not assert unequivocally that Mr Onute would not give evidence. If he failed to attend and

face cross-examination, the appellant would be able to submit that his evidence should be excluded.

129. As to Article 6, Mr Owen points out that no Part 1 extradition case has surmounted the high threshold of showing a substantial risk of a flagrant denial of a fair trial. He relies on the passage in *Symeou* quoted at [75] above, on Dr Bratu's acceptance that someone in the appellant's position could have a fair trial in Romania, and on further information provided by the respondent which shows that in 2019, 33% of cases prosecuted by the DNA which went to trial ended in acquittal. There has been identified a systemic risk of breach of Article 3, and hence assurances are required in that regard; but no corresponding systemic risk as to Article 6 has been identified. The CVM reports contain both good and bad, but the European Commission has not concluded that there is such concern for the rule of law that the Article 6 and section 13 thresholds are passed. Thus the latest report, that of October 2019 referred to at [21] above, expresses concerns but shows a shift in attitude in 2019. Dr Basham, in his further report, was dismissive of the CVM reports, suggesting that the EU turns a blind eye to Romania's failings for economic reasons. Mr Clark expressed a similar approach. It is submitted that the court should not accept those views.

130. It is further submitted that Mr Clark lacks independence as an expert witness: he has admitted that he failed to declare a conflict of interest despite having in the past been paid to advise a company on behalf of Mr Adamescu senior. Mr Owen condemns him as "a truly dreadful witness". He invites our attention to a transcript of evidence given by Mr Clark in October 2018 in another case involving extradition from Romania, in which Mr Clark said that the DNA is "actually an organisation that's responsible for its own kind of corruption". He expressed the opinion that no significant decision taken by any judge in Romania is independent, and said that although not a lawyer he felt able to make that pronouncement because "law is too important to be left to lawyers". He had not given evidence to a court before, and understood that the role of an expert witness was "to be invited and give their opinion". He was not aware that giving a balanced opinion, putting the other side of the argument, was "part of the remit".

131. As to other fresh evidence, it is submitted that the appellant's reliance on the dismissal of Ms Kovesi is misconceived, because it does not acknowledge her subsequent appointment by the EU's Conference of Presidents as the head of the European Public Prosecutor's Office. She has a 7-year term of office in that post, and was appointed after detailed scrutiny of her past conduct, including the allegations which were the basis of her dismissal in Romania. It is submitted that, in the light of that appointment, it is impossible for the appellant to maintain his contention that Ms Kovesi was, and is, corrupt. Further, the respondent has provided further information stating that the Superior Council of Magistracy, the public authority which acts as the guarantor of judicial independence, did not accept the allegations that Ms Kovesi had been deficient in the discharge of her duties, and did not support her removal from office. The decision of the Constitutional Court, requiring the President to dismiss Ms Kovesi, did not consider the merits of the allegations against her: it was a decision on a constitutional point.

132. It is submitted that the evidence of Dr Hanning, consisting of double or triple hearsay based on an unidentified source, is no more than the conduit for an attempt to introduce anonymous evidence, and should be rejected as inadmissible on that ground. Mr Owen invites us to view with suspicion the fact that the purported notes of meetings are said

to have come into the appellant's possession after Ms Kovesi had denied attending any meetings with political decision-makers.

133. As to the challenge under Article 3, the respondent submits that there is in law no obligation upon Romania to give assurances about the minimum cell space to be made available to accused persons (as opposed to those convicted), but assurances have in fact been given that the appellant would be provided with a minimum cell space of 3 sq m in all conditions supervised by the National Prison Administration. The assurances cover the period following return, pre-trial, during trial and (if relevant) after conviction. The number of assurances in part reflects the volume of evidence served from time to time on behalf of the appellant.

134. Romania has also provided evidence as to the medical treatment and examination which would be available to the appellant, and an assurance that he would be transferred to an external hospital if he required treatment there. He would be permitted access to his own doctors in prison if he wished. In detailed further information dated 3 October 2018, the respondent explains that psychiatric health care can be provided in four hospital-prisons (one of which is Jilava prison, which has its own psychiatrist) or through referral to, or hospitalisation in, the public health system. Treatment recommended in a forensic psychiatric report or after complex psychiatric assessment will be implemented by the prison administration. The reduction of suicide risks is a priority of the Romanian penitentiary system.

135. With specific reference to the initial period when the appellant is returned to Romania, the further information on which the respondent relies includes the following. A letter of 27 January 2017 indicates that permission may be given for a doctor to be a member of the Romanian escort. The letter of 17 November 2017 to which the DJ referred (see [80] above), contains an assurance that, whilst in the custody centre of the Ialomita County Police Inspectorate the appellant will receive a medical examination, will be entitled to free medical assistance and "will also benefit, upon request or on recommendations, of psychological assistance provided by the facility psychologist". A further letter of 11 March 2020 includes the following "general remark":

> "we would like to indicate that the existence of a medical condition which, from the point of view of the person concerned by the European arrest warrant is not compatible with detention, can generate the need to order certain procedural measures either in addition to those already ordered, or less restrictive of rights and liberties …"

136. The respondent submits that the DJ was entitled to accept the assurances, which he did after a proper consideration of the issues. He was correct to attach weight to the forged letter dated 22 December 2017, which had been put before the court in an attempt to undermine the assurances provided by Romania. Reliance is placed on recent decisions in which Divisional Courts have upheld assurances given by Romania: *Scerbatchi v First District Court of Bucharest, Romania* [2018] EWHC 3612 (Admin) and *The Baia Mare Court, Romania v Varga and Turcanu* [2019] EWHC 722 (Admin). Evidence by Dr Chirita to the effect that Romanian assurances would not be honoured was rejected in both of those cases, and does not provide any basis for allowing this appeal. It is not necessary for the respondent to show that every prison in Romania is Article 3

compliant, and the assurances that this appellant will be detained in Article 3 compliant conditions can be relied upon.

137. It is submitted that none of the reports on which the appellant seeks to rely provides any real support for the appellant's case, and that none of the proposed fresh evidence meets the *Fenyvesi* test of being 'decisive'. Romania has answered all the points made. Mr Owen relies on *Court in Mures v Zagrean* [2016] EWHC 2786 (Admin), in which a District Judge had discharged a requested person on Article 3 grounds. The Romanian judicial authority subsequently provided an assurance as to minimum individual space which was in substantially the same terms as the assurance given in this case. In allowing the judicial authority's appeal, the court said at [61] that if the later assurance had been before the District Judge –

> "she would have been bound to conclude that there was no real risk of a violation of Article 3 ECHR."

138. The overall submission of the respondent is that there is no basis for allowing this appeal. In the alternative, the court is invited to seek further information to resolve any areas of concern, rather than allowing the appeal. The respondent relies in this regard on the procedure adopted by the CJEU in *Criminal Proceedings Aranyosi and Caldarau* (C-216/18 PPU).

139. We are grateful to all counsel and solicitors for their preparatory work and submissions.

140. After the conclusion of the appeal hearing, this court drew to the attention of the parties a recent decision of the ECtHR: *Iancu v Romania* (application 41762/15). The applicants in that case complained of overcrowding and inadequate material conditions at a number of different prisons in Romania. The Court found no reason to reach findings different from those which had been reached in *Rezmiveş*, and concluded that the applicants' conditions of detention were inadequate.

141. The parties were permitted to make further submissions. For the appellant, it was submitted that the decision in *Iancu* shows that the problems identified in *Rezmiveş* persist across a range of prisons. It was submitted that overcrowding would exacerbate the appellant's ASD and significantly increase the risk of suicide. That was said to be an obvious point, but application was nonetheless made to adduce further evidence in support of it, in the form of letters from Professor Baron-Cohen and Dr Isaacs.

142. The respondent made no submissions, but noted that none of the applicants in *Iancu* was a prisoner who had been extradited and who had the benefit of assurances as to his conditions of detention.

143. We turn at last to our discussion of the submissions, and our conclusions. We can express our views comparatively briefly.

Discussion:

144. We begin by considering some specific points of criticism of the DJ's judgment.

145. First, we address the appellant's submission that the passage which we have quoted at [84] above shows an error of law, in that the words which the DJ emphasised show that

he considered only the moment when Judge Nastase issued the EAW, and regarded the state of mind of Judge Nastase on 6 June 2016 as decisive. Mr Keith is correct, as we have indicated at [66] above, in submitting that the obligation on the DJ was to consider the whole process which leads to the decision to issue the EAW. That is not, however, necessarily inconsistent with considering the state of mind of the decision-maker at the time the decision was taken: there will not usually be any difference between the motivation of the requesting authority in the weeks or months preceding the issue of the EAW, and the state of mind of the individual at the moment when he or she issues the warrant. We note that it is not contended by the appellant that Judge Nastase was in some way deceived into issuing the EAW: rather, the appellant alleges that the issuing of the EAW is an example of the Romanian judiciary corruptly doing the bidding of the DNA, with full knowledge of the impropriety. We therefore have considerable reservations about the submission that, by expressing himself in the terms he did, the DJ was indicating that he had limited his consideration in the way Mr Keith suggests. The form of words which the DJ used was in our view consistent with the judgments in both *Antonov and Barauskas* and *Slepcik* (see [66] above). Consistent with those judgments, it seems to us that the proper approach is to address the question as formulated by the DJ at [31] of his judgment, but to have regard to the whole of the process leading up to 6 June 2016 when deciding whether the EAW was issued that day out of political motivation. Whether or not the DJ erred in the way he expressed the test, that is the approach we adopt in considering whether he was wrong in the conclusion he reached.

146. Next, we consider the submission that in the passage we have quoted at [85] above, the DJ made an error as to the chronology of events. We agree that he did, and accordingly the point which he made at [201] of his judgment was based on a false premise. We do not however regard that discrete error as undermining the DJ's overall conclusion on the question of whether the prosecution of the appellant is politically motivated. In our judgment, the appellant's submissions placed disproportionate emphasis on the fact that proceedings against the appellant were reactivated soon after Nova had given notice of intended arbitration proceedings. That coincidence of timing does not in our view lend any significant support to the contention that the prosecution is politically motivated. We regard it as far less significant than another feature of the chronology, namely the fact that Mr Ponta had ceased to be Prime Minister months before proceedings were commenced against the appellant.

147. A third specific criticism relates to the passage which we have quoted at [87] above. We accept Mr Keith's submission that the DJ misstated the position: he quoted from the Commission's November 2017 report, but failed to appreciate that in the relevant part of that report, the Commission was referring back to, and quoting from, its January 2017 report. In consequence, the DJ overstated the extent of the successful reform of the Romanian judicial system, in particular by failing to refer to the Commission's view that Romania had recently "gone backwards" on some of the important benchmarks against which progress was tested, in particular in respect of judicial independence. Again, however, given the mass of evidence which he considered, we do not regard that error by the DJ as undermining his conclusions.

148. We do not think it necessary to refer to criticisms made of some other specific passages in the DJ's judgment: they were in our view points of textual analysis which showed, in the words of the Lord Chief Justice in *Love*, "a misplaced focus on omissions from

judgments or on points not expressly dealt with". They did not assist us in deciding whether the DJ's decision was wrong.

149. We therefore turn to the DJ's decisions on the issues under appeal. In doing so, we will consider whether the DJ was wrong in his decisions and, if not, whether the fresh evidence leads this court to a different conclusion.

Section 13(a):

150. In rejecting the submission that the prosecution of the appellant was politically motivated, the DJ focused on the fact that Mr Ponta had ceased to be Prime Minister several months before proceedings were commenced against the appellant; Ms Kovesi's statement that decisions to open criminal investigations were made by prosecutors without political interference; and the presumption that requests for extradition are made in good faith. He was, in our judgment, entitled for those reasons to reach the decision he did. Like him, we have been struck by the absence of any logical or convincing explanation for why a prosecution of the appellant should have been commenced for political reasons after Mr Ponta left office, and pursued years later despite the conviction and subsequent death of Mr Adamescu senior, who is said to have been Mr Ponta's primary target. We are unpersuaded by Mr Keith's submission that, even after Mr Ponta's removal from office, it was inevitable that the politically-motivated investigation which he had instigated would result in the prosecution of the appellant.

151. The evidence on this point of Dr Bratu, suggesting that the appellant was "collateral damage" flowing from the politically-motivated prosecution of his father, is in our view speculative, and does not assist the appellant. She refers in her report to the widespread public support for anti-corruption measures, the high level of public trust in the DNA and the facts that Mr Ponta's career was marked by corruption charges, and he was the first sitting Prime Minister to be indicted for corruption. She does not however sufficiently address the question of why, against such a background, a prosecuting authority would think it appropriate to try to pursue a politically-motivated case improperly instigated by Mr Ponta. Both she and Dr Basham have asserted strong views as to the political motivation of the prosecution without considering, or even acknowledging, the evidence in support of the charges against the appellant. In our view, that is a significant weakness in their evidence: we accept Mr Owen's submission that, although a prosecution might be politically motivated even though there was evidence to support it, an absence of evidence might strengthen an inference of political motivation. This is not a case in which it can be said there is no evidence against the appellant. Moreover, a willingness to express a strong opinion as to political motivation, without considering the evidence against the appellant, casts doubt on the objectivity of an expert witness.

152. In those circumstances, we are satisfied that the decision made by the DJ, on the evidence before him, was not wrong.

153. We have considered all of the further evidence on which the appellant seeks to rely in support of ground 2. It does not in our view assist him. As to the attack upon Ms Kovesi, we accept the respondent's submission summarised at [131] above. The appellant's case in this regard is based substantially on the fact that she was dismissed from office; but that fact must be viewed in the light of the features identified by the

respondent, in particular Ms Kovesi's subsequent appointment to an important prosecutorial post. In our judgment, the foundation of the appellant's argument is insufficient to bear the weight placed upon it.

154. Dr Basham in his further report refers to recent attempts by the Romanian government to water down the penalties for corruption, which he says served only to discredit the current Prime Minister in the minds of many Romanians. He also refers to the "huge protests across Romania" which greeted recent proposed changes to the judicial system, seen as a further attempt to politicise the anti-corruption campaign. Further, he says that the death of Mr Adamescu senior was much discussed throughout the country, that his mistreatment by the authorities generated a fair degree of sympathy for the Adamescu family and that publicity surrounding his death has improved awareness of the appellant's case and has been a catalyst for a measure of sympathy for the appellant's legal predicament. But like Dr Bratu (see [79] above), he does not in our view sufficiently address the implications of these observations when considering whether the prosecution of the appellant was politically motivated.

155. We regret to say that we do not feel that the reports of Mr Clark bear the hallmarks of impartial expert opinion by an author conscious of the need to acknowledge reasonable counter-arguments. The transcript of Mr Clark's evidence from another case, to which we refer at [130] above, does not reflect well upon him; and Mr Keith realistically accepted that his reports in this case contain a lot which is repetitive, and in some respects show a lazy approach. The same material is in our view extensively recycled in his reports, and also the reports of Dr Basham, and used as a basis for what is sometimes assumption rather than inference.

156. The statement of Dr Hanning faces the immediate difficulty that it consists of double hearsay based on an anonymous source. That in itself makes it impossible to regard it as decisive fresh evidence; but it is far from being the only difficulty. We were told that Dr Hanning became known to those representing the appellant after the DJ's decision. Dr Hanning states that in conducting the initial enquiry in this matter, he researched publicly-available documents and "was in contact" with his well-placed and very reliable human source. We take that to mean that he did not volunteer to the appellant's representatives information which he already possessed, which raises the question of when and why he was engaged.

157. Dr Hanning's evidence is in any event wholly unsatisfactory. It raises many obvious and important questions, none of which can be answered because it is impossible to scrutinise the anonymous source or test the veracity of the purported notes. Mr Keith recognises that difficulty, but suggests that the evidence shows at least a risk that the system allowed political interference, and that it would be unjust to ignore it completely. We disagree. Even if the admission of this anonymous hearsay could be justified in principle, it is impossible to argue that this statement contains decisive evidence such as to meet the *Fenyvesi* criteria. On the contrary: we take the view that no weight at all can be attached to it.

158. For those reasons, we see nothing in the proposed fresh evidence which alters our conclusion that the DJ's decision was not wrong. None of it is decisive of any point on which the appellant seeks to rely.

Section 13(b), and Article 6:

159. We take grounds 3 and 4 together, as counsel did in their submissions.

160. There is a significant degree of overlap between these grounds, and ground 2, because the appellant's case is that his prosecution is politically motivated and he will not be able to defend himself against false charges because a corrupt system of criminal justice will deny him a fair trial. It is on that basis that he argues that there are substantial grounds for believing that, if extradited, he faces a real risk of a flagrant denial of a fair trial and that there is a reasonable chance he might be prejudiced at trial because of his political opinions. Our decision upholding the DJ's decision on ground 2 therefore adds to the difficulty which the appellant faces in advancing his case in respect of grounds 3 and 4. He faces the further difficulty that in relation to Article 6 there is no pilot judgment, or other evidence approaching an international consensus, rebutting the presumption that Romania will comply with its Convention obligations.

161. It is clear from the evidence that Romania has been beset with problems of corruption and that judicial independence has on occasions been compromised. The admitted taking of bribes by Judges Stanciu and Roventa, whether or not the appellant was complicit in those bribes, is in itself an indication of corruption affecting the observance of the rule of law. It is however equally clear that substantial efforts have been made in recent years to combat corruption, and to uphold judicial independence and the rule of law. The CVM reports to which we have been referred recognise both the progress and the set-backs. Overall, whilst the graph of improvement has not shown a straight line, it is in our view clear that substantial progress has been made, and the latest report (see [22] above) shows positive recent developments. It is clear, as the quoted passage shows, that the reform and anti-corruption movement has widespread support from the public; and the evidence shows that it also has the support of the judiciary. There is, we think, something of a paradox in the appellant's case: he contends that the judicial system is so corrupt, and the rule of law so weakened, that he cannot have a fair trial; but throughout the material on which he relies, there is clear evidence of the continuing progress in reform and judicial support for the rule of law. For example, the disclosure of the secret protocols – which he contends show that judicial independence has been severely compromised – was a cause for great concern on the part of the representatives of the Romanian courts of appeal (see [16] above), who sought assistance from the Superior Council of Magistracy; and we were told that the Constitutional Court (whose independence is not said to have been compromised) has ruled some of the protocols to be unconstitutional. In those circumstances, the appellant cannot in our view mount any convincing argument based on a general proposition that no fair trial is possible.

162. The DJ noted, in particular, Dr Bratu's evidence that individuals with established political profiles may have a fair trial in Romania, and Mr Breazu's evidence that the appellant would not be tried by the same judge as tried Mr Adamescu senior. He found no evidence to rebut the presumption that Romania would abide by its Convention obligations in relation to fair trial, and he noted the features of the prospective trial which we have summarised at [88] above, and which are highly relevant to the issue of whether there is a risk of a flagrant denial of a fair trial.

163. The DJ was correct to emphasise those features: a failure to address them adequately is in our view a weakness of the evidence on which the appellant relies. He was also correct to approach the Article 6 issue on the basis that in that regard the respondent was able to rely on the presumption of compliance with its Convention obligations. We are satisfied that his decisions on the section 13(b) and Article 6 issues were not wrong.

164. Again, having considered all the proposed fresh evidence, we find nothing in it which causes us to reach a different conclusion. We refer to what we have said above about the further evidence of Dr Basham, Mr Clark and Dr Hanning. We add that they have in our view failed to grapple with the points that the prosecution was commenced after Mr Ponta had left office, and that the trial process will provide opportunities for the appellant to challenge the admissibility of evidence (including, for example, the evidence of Mr Onute, should he fail to attend the trial, and any evidence which the appellant contends was obtained through SRI involvement in telephone intercepts) and to argue his case. We are unimpressed by Mr Clark's assertion that the favourable features of the CVM reports should be dismissed because the EU was motivated by financial considerations. We are satisfied that none of the fresh evidence adds significantly to the evidence on these issues which was before the DJ, and none is decisive on any of the points on which the appellant seeks to rely.

Article 3:

165. *Grecu* confirms that, in relation to prison conditions in Romania, the general presumption that a member state will comply with its Article 3 Convention obligations has been rebutted by the pilot judgment in *Rezmiveş*. We accept Mr Keith's submission that that is so, not only in relation to issues of personal space in shared prison accommodation but also in relation to material conditions in that accommodation and the availability of adequate medical treatment. In *Iancu*, the various applicants (none of whom was an extraditee to whom an assurance had been given) complained of prison conditions across a range of prisons over the period from 2005 to 2016. That recent decision accordingly provides further confirmation of a problem which was certainly continuing recently. In *Jane v Prosecutor General's office, Lithuania* [2018] EWHC 1122 (Admin) Dingemans J (as he then was) said at [18]:

> "The view of any court, including the ECtHR, on prison conditions in a country can only be definitive at the time that view is expressed; although, where it has been established that there is an international consensus that prison conditions in a certain state do not comply with article 3 of the ECHR, then in the absence of evidence that there has been a material change in those conditions, a court is likely to consider itself bound by that earlier finding."

In this case, the respondent has not attempted to put forward clear evidence of a material improvement in prison conditions generally, such that the view taken in *Rezmiveş* should no longer be followed. In those circumstances the appellant was, and is, able to show that, absent sufficient and reliable assurances by the respondent, there are strong grounds for believing that he would, if returned to Romania, face a real risk of treatment which violates Article 3. It is therefore necessary to focus, in considering this ground, on whether the respondent has given assurances which satisfy the court that the appellant will be held in conditions which comply with Article 3. That question must be considered in relation to the whole of the prospective period of detention. On the evidence, the likelihood is that the appellant, if returned, would for an initial short period be held at a detention centre under the control of the Ialomita County Police Inspectorate, and then transferred to a prison or prisons under the control of the National Administration of Penitentiaries for the periods before and during trial and, if convicted, whilst serving any sentence of imprisonment.

166. The DJ considered the evidence as to prison conditions, the state of the appellant's mental health (as described, at that stage, in the reports of Professor Eastman and Dr Joseph), the significance of the fabricated letter of 22 December 2017 and the sufficiency of the assurances provided by the respondent. He did not rely on a presumption, but was satisfied that the Romanian authorities would abide by their Article 3 obligations.

167. We do not think the DJ can be criticised for concluding that he could attach little weight to the statements of the serving prisoners. It is unfortunate that the respondent at that stage took the stance that video link evidence would not be possible, only to change its stance at a later date in a different case; but the DJ could only assess the evidence which was before him, and he was entitled to conclude that little weight could be given to statements by witnesses who were not available for cross-examination. Indeed, the importance of such cross-examination became clear when two of the witnesses concerned gave oral evidence before us.

168. Where the two psychiatrists differed, the DJ was entitled to prefer the evidence of Dr Joseph. He was also entitled to conclude, on the evidence before him, that such medical difficulties as the appellant may have did not add any significant weight to his Article 3 challenge.

169. As to the letter of 22 December 2017, Mr Keith argues that this could have no impact on Article 3 once the DJ had found its contents to be untrue, and that the DJ was therefore wrong to regard it as damaging the appellant's case in relation to prison conditions. We disagree. The DJ disbelieved the appellant's evidence about this letter, and found it to have been a fabricated document. It is unrealistic to suggest that he should then have proceeded as if the attempt to adduce it in evidence had never been made. He was entitled to consider why that attempt had been made. The contents of the letter, had they been true, would have been very damaging to the respondent's reliance on assurances as to the provision of personal space and medical treatment. The only purpose of fabricating such a letter was to assist the Appellant's case. It appears that the appellant was insistent on the letter being adduced in evidence. In those circumstances, we accept Mr Owen's submission that the DJ was entitled to draw the inference that the appellant, or someone trying to help him, had resorted to forgery in an attempt to undermine assurances which are sufficient to answer the appellant's case.

170. We accept that the DJ did not make any reference to *Rezmiveş* or to *Grecu*, but it is, in our view, implicit in his judgment that he recognised that the respondent could not rely to a presumption of compliance with Article 3 in relation to prison conditions, and that appropriate assurances were necessary. The multiplicity of assurances which had been given by the respondent reflected the multiplicity of requests for further information: that iterative process has given rise to some practical difficulty in identifying the relevant assurances, but we do not accept the submission that the DJ should have regarded the assurances as unreliable because of inconsistency. The key points, on which he focused at [354] in his judgment, were that the assurances of November 2017 applied to any prison in which the appellant may be detained under the control of the National Prison Administration and that the appellant would have access to healthcare including by medical practitioners of his own choice.

171. We do not see any force in Mr Keith's criticism that the DJ wrongly ignored "the obvious and direct comparator to the appellant's position and likely treatment", namely

Mr Adamescu senior. We understand of course why the appellant is distressed by the belief that prison conditions led to his father's death, but we do not accept the premise of Mr Keith's submission. There are obvious reasons why Mr Adamescu senior is not a direct comparator in this respect. By way of examples, Mr Adamescu senior was not extradited and did not have the benefit of the assurances which are offered in the appellant's case; and the detention centre at which Mr Adamescu senior was initially held has been refurbished since he was there.

172. We accept that the DJ might have dealt more fully than he did with the Article 3 issue. He was not however required to address every argument put forward on behalf of the appellant over a lengthy hearing. We are satisfied that on the basis of the evidence before him, and in particular in the light of the assurances given by the respondent, his decision was not wrong. We turn to the proposed fresh evidence on this issue.

173. In relation to the reliability of the assurances given by the respondent, we do not think the appellant's case was strengthened by the evidence of Messrs Chihaia and Bagarea. Mr Chihaia's credibility was undermined by his highly implausible account of the inspection, which we did not believe, and both witnesses are contradicted by official records as to the dimensions of their prison cells and the numbers of prisoners held in them. We accept the accuracy of those detailed records: nothing has been put forward by way of convincing reason why we should not. The overall picture which emerges from the evidence, supplemented as it now is by the oral evidence of two of the former prisoners, is that the assurances given to those prisoners on their respective extraditions were fulfilled, save that Mr Bagarea was for three days afforded less than 3 sq m of personal space in closed conditions. Mr Bagarea's reaction when shown the record to that effect (see [110] above) was telling: his assumption had been that any breach of an assurance would be covered up by the authorities. The fact that it was not is in our view an additional reason for accepting the reliability of the records.

174. We note also that both witnesses who gave oral evidence confirmed that whilst in custody they were able to have consultations with their legal representatives and to make formal witness statements. We take that as a clear indication that an extraditee who felt that assurances given to him had been breached would be able to report that failing to his representatives.

175. Insofar as the former prisoners benefited from the Romanian law which for a time compensated prisoners, by a reduction in their sentences, for the conditions in which they were held, we accept the submission of the respondent that they did so because of breaches of the domestic standard of at least 4 sq m of personal space in shared accommodation.

176. The proposed fresh evidence contains what is clearly new and important information about the appellant's ASD, which was not diagnosed in the medical evidence before the DJ. It is relevant not just to his need for appropriate health care but also to the particular significance of personal space in his case. The recent diagnosis of ASD is not disputed by the respondent and we accept it.

177. There is no evidence that the appellant's ASD cannot be treated in a prison: the real issue is whether there will in fact be adequate health care at the prisons in which he may be held. We have summarised, at [134-135] above, the assurances which have been given in relation to health care, including as to the initial period of detention under the

control of the Ialomita County Police Inspectorate; the recognition by the Romanian authorities of the importance of reducing suicide risks; and the important fact that the appellant would be able to consult doctors of his own choosing. We also note the evidence, in the letter of 11 March 2020, that there is a psychologist within the Ialomita District Police Inspectorate, albeit not one specifically licensed to diagnose autism. Mr Keith argues that there is nothing in the various assurances provided by the respondent which shows where specialist treatment would be provided. We do not regard that as a reason to disregard, or to reject, the general assurances given: for example, and in addition to those mentioned by the DJ in his judgment, the statement in a letter of 16 January 2018 that Romanian law provides that –

> "Depending on the health condition of the person held in custody, the doctor who provides medical care in the remand and provisional arrest centre shall recommend specialised clinical examinations, laboratory or paramedical investigations to be carried out in the designated health care facilities … .
>
> In this regard, we are emphasising that the specialised medical assistance is granted according to the existing diagnostic and treatment guides at national level, in accordance with the European diagnostic and treatment guides for all medical specialities, including the psychiatry."

178. Although Mr Keith suggests that the assurances do not cover the initial period of detention, before transfer to a prison, we are satisfied that they do.

179. We have considered all of the proposed fresh evidence, including that most recently provided in the light of the decision in *Iancu*. It does not alter our view that the decision of the DJ on the Article 3 issue was not wrong. The assurances which have been given by the respondent satisfy us, in respect of the whole of the prospective period of custody, that there is no real risk of treatment which violates the appellant's rights under Article 3, whether in respect of his accommodation or his health care. None of it is decisive on any of the points on which the appellant seeks to rely.

Conclusions:

180. None of the challenged decisions of the DJ was wrong.

181. The statement of Dr Hanning is an attempt to introduce anonymous hearsay evidence and is plainly inadmissible.

182. We accept that the other fresh evidence was not available at the time of the hearing before the DJ. However, none of it is decisive on any of the issues to which it relates. It therefore fails to meet the *Fenyvesi* criterion. We accordingly decline to admit it.

183. This appeal therefore fails and is dismissed.