



Neutral Citation Number: [2023] EWHC 2123 (Admin)

Case No: CO/1160/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**IN THE MATTER OF AN APPEAL UNDER**  
**SECTION 28 OF THE EXTRADITION ACT 2003**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18 August 2023

**Before :**

**THE HONOURABLE MR JUSTICE MURRAY**

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**Between :**

**ALBA IULIA COURT OF LAW, ROMANIA**

**Appellant**

**- and -**

**FERENCZ IOAN SZABO**

**Respondent**

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**Mr David Ball** (instructed by **CPS Extradition Unit**) for the **Appellant**  
**Mr Robbie Stern** (instructed by **JD Spicer Zeb Solicitors**) for the **Respondent**

Hearing date: 15 June 2023

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**Approved Judgment**

This judgment was handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down are deemed to be 18 August 2023 at 10:30 am.

**Mr Justice Murray:**

1. This is an appeal by a judicial authority, the Alba Iulia Court of Law in Romania, under section 28(1) of the Extradition Act 2003 (“the 2003 Act”) against the discharge of Mr Ferencz Ioan Szabo pursuant to section 21(2) of the 2003 Act by DJ Clews, following a hearing before him at Westminster Magistrates’ Court on 14 March 2022.
2. The judge set out his reasons for discharging Mr Szabo in a judgment dated 26 March 2022 and handed down on 28 March 2022 (“the Judgment”). The judge discharged the respondent as he found that there were substantial grounds for believing that there was a real risk of a breach of the respondent’s rights under article 3 of the European Convention on Human Rights (“ECHR”) in respect of the initial 21-day period that he would be expected to stay in Bucharest-Rahova Prison (“Rahova”) before being moved elsewhere in the Romanian prison estate to serve the bulk of his sentence.
3. The judicial authority has also applied to have admitted on appeal two additional prison assurances:
  - i) one dated 4 March 2022 given by Commissioner of Correctional Police, Dr Dan Halchin, General Director, National Administration of Penitentiaries (“the March 2022 Assurance”); and
  - ii) the other dated 8 April 2022, given by Chief Prison Police Commissioner Gabriel Păun, Director, Directorate for Prison Safety and Execution Regimes (“the April 2022 Assurance”).

Mr Păun had given the prison assurance dated 9 December 2021 (“the December 2021 Assurance”), which was before DJ Clews at the extradition hearing on 14 March 2022 and which the judge found to be inadequate in relation to Rahova.

4. The judicial authority appeals with the permission of Lane J, given in his order dated 21 February 2023, made on a review of the papers. Lane J also directed that the judge determining the appeal should determine the judicial authority’s applications for each of the March 2022 Assurance and the April 2022 Assurance to be admitted in these proceedings.
5. In the perfected grounds of appeal dated 12 April 2022, which were before Lane J, the judicial authority advanced a single ground of appeal, namely, that the judge was wrong to order Mr Szabo’s discharge on the basis of the risk of breach of his rights under article 3. In the perfected grounds, the judicial authority put forward two limbs to this ground, namely, that:
  - i) the judge was wrong to exercise his case management powers to refuse to admit material that had been provided to the court in *Gheorghe v Romania* [2020] EWHC 722 (Admin), an earlier case where conditions in which a requested person would be held at Rahova were at issue, given Mr Szabo’s failure prior to the extradition hearing to provide any statement of issues (as he had been directed to do) or to raise any point about the December 2021 Assurance as it related to Rahova; and

- ii) the judge erred in finding that extradition would not be compatible with Mr Szabo's rights under article 3 without having made a request further to article 613(2) of the Trade and Cooperation Agreement between the European Union and the United Kingdom of 30 December 2020 (OJ 2021 L149/10) ("the Trade and Cooperation Agreement"), also known as an *Aranyosi* request.
6. For the appeal hearing, bearing in mind its application to adduce the March 2022 Assurance and the April 2022 Assurance, the judicial authority advanced a third limb to its single ground of appeal, namely, that there are binding assurances before the court following the decision of the Divisional Court in *Marinescu v Romania* [2022] EWHC 2317 (Admin) that fall to be considered and that dispose of the appeal, namely, the March 2022 Assurance and the April 2022 Assurance.

### *The Arrest Warrant*

7. The respondent's extradition to Romania is sought by the judicial authority to serve a sentence of 2 years, 2 months, and 8 days (approximately), the respondent having been convicted in Romania of offences of (i) theft and (ii) driving without a licence. The extradition request was issued on 18 November 2021 and certified by the National Crime Agency on the same day as an arrest warrant under Part 1 of the 2003 Act ("the Arrest Warrant"). The Arrest Warrant is governed by Title VII of the Trade and Cooperation Agreement.
8. The respondent, who is 33 years old, has a lengthy offending record in Romania. His international conviction certificate shows 19 convictions in Romania, including the convictions in relation to which his extradition is now sought.
9. According to the further information provided by the judicial authority, the background is as follows. On the evening of 29/30 May 2015, Mr Szabo committed "aggravated theft". In a hotel carpark, he broke the window of a van and stole its satellite-navigation equipment.
10. By criminal judgment no 620 of 22 November 2016, made final on 28 December 2016, Mr Szabo was sentenced to "3 years and 536 days" [sic], "for committing the crime of aggravated theft in a state of post-conviction recidivism." At the time of his conviction and sentencing, he had 17 prior convictions for various offences of theft.
11. Mr Szabo was imprisoned from 27 January 2017. Just over a year later, on 13 March 2018, he was released on parole. He still had a remaining sentence of 433 days in prison. This conditional release had been ordered by a judgment of Deva District Court, made final on 13 March 2018, that is, the day of his release.
12. On 19 May 2018, during the supervision period of his conditional release from prison, Mr Szabo was found to be driving without a licence in the City of Alba Iulia in Romania. At the time of his conditional release, he had been informed that if he committed a new offence during the supervision period, the conditional release would be revoked.
13. Following a trial at which Mr Szabo was present, according to the Arrest Warrant, by a judgment dated 5 January 2021, made final on 21 July 2021, he was sentenced to 1 year for driving without a licence. In addition, his conditional release from the sentence

imposed in 2016 was revoked, and he was ordered to serve the remaining 433 days of the 2016 sentence. The total sentence was therefore 1 year and 433 days, or, in other words, 2 years, 2 months, and 8 days (approximately). Mr Szabo should have begun serving that sentence on the day it became final, namely, 21 July 2021, however he did not.

14. On 12 August 2021, a European Arrest Warrant (“EAW”) was issued in relation to Mr Szabo. On 18 November 2021, the Romanian authorities were notified that Mr Szabo had been arrested in the United Kingdom, and the Arrest Warrant was issued.

*Proceedings in the UK*

15. On 18 November 2021, Mr Szabo was arrested in the UK for driving without insurance and for driving whilst disqualified. While he was being held in custody at Bromley Police Station, the police became aware that he was wanted for similar matters in Romania. The Arrest Warrant was issued and certified, and Mr Szabo was arrested under that.
16. Mr Szabo was brought before Westminster Magistrates’ Court on 19 November 2021 for an initial hearing. He was represented by the duty solicitor. He raised three issues: (i) whether Romania can be considered a valid judicial authority (as had been raised in a case called *Romania v Tiganescu* (CO/741/2020), but has since been abandoned); (ii) whether extradition would infringe his rights under article 3 of the ECHR; and (iii) whether extradition would infringe his rights under article 8 of the ECHR.
17. The article 3 point was not particularised at this stage, this being only an initial hearing. Mr Szabo was granted bail. The following directions were given:
  - i) Mr Szabo was to apply for legal aid within 7 days;
  - ii) Mr Szabo was to provide a statement of issues and all evidence relied on by 7 December 2021;
  - iii) the judicial authority was to provide any prison assurance and any further information by 24 December 2021;
  - iv) the judicial authority was to provide an opening note by 28 January 2022; and
  - v) the extradition hearing was set down for 4 February 2022.
18. The judicial authority complains that Mr Szabo did not comply with these directions or notify the court or the judicial authority that he had any difficulties in doing so. The judicial authority served an opening note dated 7 January 2022, in accordance with the directions.
19. The matter proceeded to the hearing that had been set down for 4 February 2022. At that hearing, Mr Szabo was assisted by a representative from JD Spicer Zeb Solicitors (“JD Spicer”). JD Spicer explained to the court that legal aid had been refused in December, Mr Szabo had received a quote from other solicitors that he could not afford, and he had just now received a quote from JD Spicer that he could afford. Mr Szabo applied to adjourn the hearing. The judicial authority opposed the adjournment application on the basis that no good reason had been advanced as to why steps had not

been taken earlier than the day of the extradition hearing by Mr Szabo to secure representation. The case was, however, adjourned with the following further directions:

- i) Mr Szabo was to file and serve a statement of issues and all evidence relied on by 14 February 2022; and
  - ii) the extradition hearing was set down for 14 March 2022.
20. The judicial authority complains that, once again, Mr Szabo did not comply with directions. He filed a proof of evidence dated 17 February 2022, which was after the date for compliance, together with a statement from his partner dated 18 February 2022. Mr Szabo did not file a statement of issues, as directed. The judicial authority filed an updated opening note on 11 March 2022, and an agreed bundle was prepared on the same date.
21. On 14 March 2022, the extradition hearing proceeded before DJ Clews. The judicial authority was represented by Mr Tom Cockcroft and Mr Szabo was represented by Mr Robbie Stern, as he is on this appeal.
22. No statement of issues had been filed by Mr Szabo, however the judicial authority maintains that it became apparent during the course of the hearing that Mr Szabo was taking the point that the prison assurance that had been provided by the judicial authority was defective because it failed to specify or guarantee certain material conditions for the initial 21-day period at Rahova (“the Rahova Issue”). During the course of the hearing, the judicial authority, therefore, served material that had been served in *Gheorghe* in relation to conditions at Rahova.

*The Judgment and the judge’s consideration of Gheorghe*

23. The judge began his discussion of the article 3 ground of objection to extradition with a summary of the relevant law. No complaint is made about that summary. During the course of that discussion, the judge considered the case of *Gheorghe*, and he noted the observation of Steyn J in that case at [16] that, in the absence of cogent evidence to the contrary, there is a presumption that an EU state, such as Romania, will comply with any diplomatic assurance it has given in the course of extradition proceedings. The judge noted at paragraph 38 of the Judgment that, as in this case, the assurance at issue in *Gheorghe* concerned the initial 21-day period in Rahova.
24. Steyn J, who heard the appeal in *Gheorghe*, had on an earlier occasion given leave to appeal in that case on the basis that it was arguable that the district judge was wrong to have found that the requested person’s extradition was compatible with article 3.
25. In *Gheorghe*, the judicial authority had provided for the extradition hearing an assurance dated 12 November 2018 (“the November 2018 Assurance”) regarding conditions in various prisons in which the requested person might serve part of his sentence, including Rahova. The requested person, on appeal, criticised the November 2018 Assurance in relation to conditions at Rahova on the ground that, beyond guaranteeing a minimum of 3 square metres of personal space, the assurance was limited to assuring that “the person deprived of liberty may exercise all of his rights specified in the law regarding enforcement of prison sentences”. The appellant

submitted that this was deficient as it did not refer specifically to time outside of the cell, natural light, and ventilation.

26. After permission to appeal was granted in *Gheorghe*, the judicial authority served a letter dated 22 January 2020 (“the January 2020 Letter”), which addressed the conditions in Rahova more fully, and referred to a “walking schedule”, which was said to be attached but, inadvertently, was not. The walking schedule was subsequently provided to the court on 4 March 2020 attached to a letter dated 26 February 2020 (“the February 2020 Letter”). It showed in tabular form the two-hour slots (including time walking to and from the cell) during which different classes of prisoner were permitted to walk in designated courtyards of the prison each day.
27. The appellant in *Gheorghe* objected to the admission of the January 2020 Letter and the February 2020 Letter. Steyn J decided to admit the January 2020 Letter and the walking schedule. She decided not to admit the February 2020 Letter, largely, it appears, because it was not necessary to do so. In deciding to admit the January 2020 Letter and the walking schedule, Steyn J said at [34]:

“34. As I have said, I accept that the admissibility of assurances [at a later stage of proceedings, including on appeal,] is not automatic. Nevertheless, I have no doubt that this is a case where they should be accepted. If no further assurances had been provided prior to this appeal hearing and I had found that the November assurance was inadequate, I would have been bound in this case to have followed the *Aranyosi* process of seeking supplementary information from the Romanian authorities. It is only if the existence of a real risk of Article 3 mistreatment cannot be discounted within a reasonable time that the surrender procedure should be brought to an end. There is no sensible basis on which it could be suggested that that point had been reached in this case. ... .”
28. In *Gheorghe* at [45], Steyn J rejected the appellant’s criticism of the January 2020 Letter and the walking schedule that neither identified him specifically nor directly guaranteed that he would be treated in the way described. She found that these documents provided clear information regarding the existing conditions and the prison regime in Rahova. At [56], Steyn J concluded that it was clear on the evidence before her that there were no reasonable grounds for believing that there was a real risk of a breach of article 3 if the appellant were extradited to Romania. Accordingly, she dismissed the appeal.
29. As noted by Jeremy Johnson J in *Cretu v Romania* [2021] EWHC 1693 (Admin) at [60], Steyn J did not reach a positive conclusion as to whether the November 2018 Assurance was sufficient or insufficient to show that there was no real risk of a violation of the appellant’s rights under article 3 ECHR at Rahova.
30. At paragraph 39 of the Judgment, the judge set out in quotation the following passage in *Gheorghe* at [47]:

“It is only in a minority of cases that the European Court of Human Rights has found any breach based on a combination of personal space, being between 3 metres squared and 4 metres squared and other deficiencies in the prison conditions. In the light of the further information provided by the Romanian authorities regarding Rahova Penitentiary, in my judgment, there are no reasonable grounds for believing that there is a real risk that the appellant will be subjected to prison conditions which would breach Article 3.”

31. The judge then, at paragraph 40 of the Judgment, referred to *Cretu*, noting that in that case there was a prison assurance dealing with the initial 21-day period in Rahova that indicated that each detained person would be held there in a room with a minimum individual space of 3 square metres, would have the right to walk every day in the open at least one hour per day and, as the case may be, to be involved in educational activities. He noted at paragraph 41 that the assurance before him in this case, apart from specifying a minimum space of 3 square metres, simply said:

“During this period [21 days], the inmates exercise all the rights stipulated by the law for the enforcement of custodial sentences.”

32. At paragraph 43 of the Judgment, the judge noted that in *Muršić v Croatia* [2017] 65 EHRR 1, the European Court of Human Rights found at [139] that in cases where the personal space available per inmate in a prison cell falls between 3 and 4 square metres:

“... the space factor remains a weighty factor in the Court’s assessment of the adequacy of conditions of detention. In such instances a violation of art.3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements.”

33. Having regard to this jurisprudence, at paragraph 45 of the Judgment, the judge found that the assurance given in relation to Rahova was inadequate: “The presumption of a violation of article 3 is not rebutted by the wording of the assurance.” The judge held that he could not read into the assurance that there would be time out of the cell or adequate out-of-cell activities. He found, therefore, that there were substantial grounds for believing that there was a real risk of a breach of the appellant’s article 3 rights.

34. At paragraph 46 of the Judgment, the judge noted that during the extradition hearing the judicial authority had sought to adduce two further documents, one headed “Georghe [sic] Further Information” and one headed “Georghe [sic] Walking Schedule”. I assume that these documents correspond to the following documents in the appeal hearing bundle (although neither of the documents bears the heading referred to by the judge):

- i) a letter with a typed date of 15 January 2020, stamped on behalf of the Giurgiu District Court and manually dated 21 January 2020, from the Deputy Director General of the National Prison Agency, Razvan Constantin Coțofană, to the

Appointed Judge, Ionuț Cosmin Necula, Criminal Enforcement Department, Giurgiu District Court; and

- ii) a letter dated 26 February 2020 from Judge-Delegate Cristian Alin Traian to the National Crime Agency responding to a request for further information in relation to Marian Valentin Gheorghe, attaching a letter of the same date from Mr Coțofană to Judge-Delegate Traian, attaching a “walking schedule of detainees from Prison Section E2” in relation to Rahova.
35. The original in Romanian of each of the foregoing documents is included in the appeal hearing bundle together with an English translation. It appears that these documents are the January 2020 Letter and February 2020 Letter and walking schedule considered in *Gheorghe*, although I observe that in *Gheorghe* the January 2020 Letter is said to be dated 22 January 2020 (rather than 15 January or 21 January).
  36. The judge noted that Mr Szabo objected to the admission of these documents, on the basis that (i) it was unfair for them to be admitted at a “very late stage as the hearing was in progress” and (ii) they related to the case of *Gheorghe* and could not simply be “read across” as being of general application. The judge accepted these submissions. He said that Mr Szabo would not have a realistic opportunity to respond to them, beyond the two submissions just summarised, and, although as a case management decision he could receive them, he would not be prepared to “import” their content into Mr Szabo’s case.
  37. The judge concluded his analysis of this issue at paragraphs 46-47 as follows:
    - “ ... Romania should not be allowed to believe it can supply inadequate assurances and expect there to be no consequence. It is not good enough simply to say an RP [requested person] is guaranteed all rights provided for in legislation.
    47. In those circumstances it would not be right to afford the JA [judicial authority] an opportunity of providing me with further information and I do not believe it would be fair to the RP to do so. The onus on providing the court with an adequate prison assurance is very much on the JA and Mr. Stern is entitled to make the point that the issue was raised long ago and the JA have had ample opportunity to deal with it.”
  38. For these reasons, the judge concluded at paragraph 64 of the Judgment that extradition of Mr Szabo would not be compatible with his rights under article 3 of the ECHR.

*Post-hearing procedural history and grounds of appeal*

39. On 1 April 2022, the judicial authority filed its Appellant’s Notice for this appeal.
40. On 3 April 2022, Mr Szabo filed an Appellant’s Notice challenging the judge’s rejection of his objection to extradition on the basis of a breach of his rights under article 8 of the ECHR. On 18 April 2022, Mr Szabo contacted the court and the judicial

authority proposing to withdraw the cross-appeal and reserve the position in respect of article 8. On 22 April 2022, the judicial authority indicated its agreement with this course.

41. On 25 April 2022, the judicial authority served the April 2022 Assurance, which specifically refers to Mr Szabo and addresses material conditions at Rahova, and applied for it to be admitted in these proceedings.
42. On 27 April 2022, Mr Szabo filed a Respondent's Notice.
43. On 20 June 2022, Hill J ordered the judicial authority's appeal to be stayed pending the decision in *Marinescu*. She also gave directions for further written submissions by the parties following that decision, with the judicial authority to file and serve its submissions within 14 days and Mr Szabo to file his responsive written submissions within a further 14 days.
44. On 12 September 2022, the Divisional Court handed down its decision in *Marinescu*. Following that decision, the parties made written submissions.
45. On 11 October 2022, the judicial authority also applied for the March 2022 Assurance to be admitted in these proceedings on the basis that it had been considered and accepted as reliable by the Divisional Court in *Marinescu* at [55]-[65]. In the March 2022 Assurance, which is concerned with detention conditions at Rahova and is not specific to any detainee, Dr Halchin gave further information about time spent by each detainee out of their cell (including the right to a 2-hour daily walk) and access to various activities, heating, and hygiene. In addition, he provided an assurance that an action plan was in place for the period 2020-2025 in order to address concerns regarding prison conditions in Romania and noted that the National Administration of Penitentiaries guaranteed "that the prison punishment, including the quarantine and observation period, will be served in decent conditions which respect human dignity."
46. By his order dated 21 February 2023, as I have already noted, Lane J granted permission to appeal on a review of the papers and directed that the judge hearing the appeal should also determine the judicial authority's applications for the March 2022 Assurance and the April 2022 Assurance to be admitted in these proceedings.

#### *Legal principles*

47. In considering each question at issue on this appeal by the judicial authority, I must determine under section 29 of the 2003 Act whether the judge ought to have decided the question differently. If I determine that he should have decided the question differently, then I must decide whether, had he decided the question in the correct way, he would not have been required to discharge Mr Szabo. If these conditions are satisfied, then I may allow the appeal. Otherwise, I must dismiss the appeal.
48. The legal principles relevant to determination of an objection to extradition on the basis of an alleged breach of a request person's rights under article 3 of the ECHR are summarised by the Divisional Court in *Marinescu* at [18]-[28]. There is no need to set them out here *in extenso*. I have had regard to them.

49. In *Marinescu* at [47], the Divisional Court referred to the process established by the Court of Justice of the European Union in *Criminal proceedings against Aranyosi and Căldăraru* (Joined Cases C-404/15 and C-659/15 PPU) [2016] 3 WLR 807, for cases where article 3 is raised as an objection to extradition, to give effect to article 15(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between member states (OJ 2002 L190/1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L81/24) (“the Framework Decision”). Article 15 (Surrender decision) of the Framework Decision reads:

“1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.”

50. In *Mohammed v Portugal* [2017] EWHC 3237 (Admin), the Divisional Court summarised the guidance given by the CJEU on the procedure to be followed in such a case as follows:

“15. In *Aranyosi*, the CJEU decided that the consequence of the execution of an EAW must not be that the requested person will, if returned, suffer inhuman or degrading treatment. At [88] – [89], [91] – [92], [95] and [98] the CJEU set out the procedure that must be followed where the judicial authority of a member state is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the state that has issued the EAW.

**Stage 1** of the procedure involves determining whether there is such a risk by assessing objective, reliable, specific, and properly updated evidence. I deal further with the ... type of evidence and what assessment is required at [50] – [51] below. A finding of such a risk cannot lead, in itself, to a refusal to execute the EAW. Where such a risk is identified, the court is required to proceed to stage 2.

**Stage 2** requires the executing judicial authority to make a specific assessment of whether there are

substantial grounds to believe that the individual concerned will be exposed to that risk. To that end it must request the issuing authority to provide as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained.

**Stage 3** deals with the position after the information is provided. If in the light of that, and of any other available information, the executing authority finds that, for the individual concerned, there is a real risk of inhuman or degrading treatment, execution of the warrant must be postponed but cannot be abandoned.”

51. Following the United Kingdom’s departure from the European Union, as I have already noted, extradition issues are governed by Title VII of the Trade and Cooperation Agreement. The provision of the Trade and Cooperation Agreement corresponding to article 15(2) of the Framework Decision is article 613(2). Article 613 (Surrender decision) reads:

“1. The executing judicial authority shall decide whether the person is to be surrendered within the time limits and in accordance with the conditions defined in this Title, in particular the principle of proportionality as set out in Article 597.

2. If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Article 597, Articles 600 to 602, Article 604 and Article 606, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits provided for in Article 615.

3. The issuing judicial authority may forward any additional useful information to the executing judicial authority at any time.”

52. In relation to the judicial authority’s application to admit the March 2022 Assurance and the April 2022 Assurance, I note that, having regard to earlier decisions of the Divisional Court in *United States of America v Assange* [2021] EWHC 3313 (Admin), [2022] 4 WLR 11 and *Sula v Greece* [2022] EWHC 230 (Admin), the Divisional Court in *Greece v Hysa* [2022] EWHC 2050 (Admin) at [132] summarised principles relating to the admission of prison assurances on appeal as follows:

“...

- (1) The High Court may admit an assurance by the Receiving State, even if it is offered for the first time at the appeal stage;

- (2) Such an assurance is not fresh evidence. It is not evidence at all. Rather, it is an ‘issue’ for the purposes of section 29(4) [of the 2003 Act];
- (3) This means that the assurance should not be admitted unless it would have resulted in the District Judge deciding the relevant question differently, if it had been placed before the District Judge;
- (4) However, the appellate court is not bound to admit the assurance, even if it would or might have resulted in the District Judge deciding the relevant question differently. There is a prior question. This is whether the appellate court should, in its discretion, be prepared to admit the assurance.
- (5) In this regard, the Court must examine the reasons why the assurances have been offered at a late stage and consider the practicability or otherwise of the Requesting State having put them forward earlier. It is also necessary to consider whether the Requesting State has delayed the offer of assurances for tactical reasons or has acted in bad faith.
- (6) If the requested assurance has not been provided within a reasonable time, and was supplied outside the time limit laid down for its supply, this may be a reason for refusing to admit the assurance on appeal.”

53. In *Pojega v Romania* [2023] EWHC 997 (Admin) [35]-[36], the Divisional Court said:

- “35. The High Court has an inherent jurisdiction to receive fresh evidence or information (including an assurance) from a respondent to an extradition appeal: *FK v Stuttgart State Prosecutor's Office, Germany* [2017] EWHC 2160 (Admin), [39]. The criteria in s 27(4) of the Extradition Act 2003 (EA 2003) and those set out in *Szombathely City Court, Hungary v Fenyvesi* [2009] 4 All ER 324, [28]-[35], do not apply to respondents seeking to admit fresh evidence: *FK* at [34]-[35].
36. The key applicable test is whether it is in the interests of justice to admit the material in question.”

*Admission of the March 2022 Assurance and the April 2022 Assurance*

54. In relation to the first limb of the single ground of appeal, Mr David Ball, counsel for the judicial authority, submitted that there is no doubt that the March 2022 Assurance, which was considered in detail and accepted as reliable in *Marinescu*, and the April 2022 Assurance, which was prepared specifically in relation to Mr Szabo, dispose of Mr Szabo’s challenge under article 3. The only question is whether they can be admitted

on appeal. He submitted that it is clear from the relevant authorities that they can: see, for example, *Assange* at [42] and *Hysa* at [132]. If this court were to refuse to admit these assurances, the result would be “a windfall to ... [a] convicted criminal, which would defeat the public interest in extradition”: *Assange* at [42]. It has not been suggested by the judge or by Mr Szabo that there has been any delay by the judicial authority for tactical reasons or that the judicial authority has acted in bad faith.

55. Mr Ball submitted, as had been submitted by the judicial authority in *Assange*, that if the appeal were dismissed, it would be open to the judicial authority to make a fresh request for extradition and to put forward these assurances, subject, of course, to properly available abuse arguments. This would lead to unnecessary expense, delay, and duplication of proceedings. The case of *Romania v Iancu* [2023] EWHC 1274 (Admin) (“*Iancu 2*”), he submitted, demonstrates that such proceedings would not necessarily be abusive, given the absence of tactical conduct or bad faith on the part of the judicial authority.
56. Mr Ball noted that Mr Szabo relies on the case of *Hysa*, where the court refused to admit assurances on appeal. But, he submitted, the facts of that case were quite different. In this case, no *Aranyosi* request was made by the judge, and therefore there was no failure by the judicial authority to respond within a time limit set by the judge, as happened in *Hysa*. The admission of the assurances would not prejudice Mr Szabo. In line with *Sula* at [40]-[41] and *Pojega* at [44]-[47], it is in the interests of justice for the assurances to be admitted.
57. In reply to these submissions, Mr Stern submitted that, applying the principles summarised in *Hysa* at [132], the March 2022 Assurance and the April 2022 Assurance should not be admitted. In contrast to *Assange* and *Sula*, this is not a case where “the possibility of an assurance arose for the first time at the appellate stage”: see *Hysa* at [138]-[130]. Article 3 was raised as an issue at the initial hearing, so that the judicial authority had a period of four months to provide an assurance that satisfied the well-settled criteria in *Muršić*. That was a “reasonable and fair deadline” within which the judicial authority should have complied.
58. Mr Stern accepted that, in contrast to the position in some other cases, the judge had not made an *Aranyosi* request with an express deadline for a response. However, he submitted, by the time of the initial hearing in November 2021, much less the extradition hearing in March 2022, what amounts to a sufficient prison assurance in Romanian cases was well-established and well known.
59. Mr Stern submitted that the judicial authority failed to act with diligence in relation to the article 3 issue. Furthermore, it has not provided an adequate explanation for its failure to provide an assurance in the terms of the April 2022 Assurance by the time of the extradition hearing on 14 March 2022, much less by the original deadline of 28 January 2022.
60. Mr Stern submitted that, in relation to the April 2022 Assurance, there is no explanation for the delay between 8 April 2022, when the judicial authority received it, and 25 April 2022, when the judicial authority applied for it to be admitted in these proceedings. Similarly, he submitted, there is no adequate explanation for the delay between 4 March 2022, the date of the March 2022 Assurance, and 11 October 2022, the date that the judicial authority applied for it to be admitted in these proceedings. To the extent that

there was any justification for the appellant having waited until the hand-down of *Marinescu* on 10 September 2022, there is no explanation for the further month's delay before it was served in this case.

61. Mr Stern noted during his submissions that the judicial authority did not, prior to this appeal, suggest that it was in any way prejudiced by Mr Szabo's failure to provide a statement of issues nor did the judicial authority seek an adjournment of the hearing as a result of that failure. In its opening note for the extradition hearing, the judicial authority had taken the position that the December 2021 Assurance "complies fully with the requirements identified in *Greco & Bagea* [sic] v *Romania* [2017] EWHC 1427 [(Admin)] and therefore wholly alleviates any Article 3 concerns". In light of that position, Mr Stern submitted, the judicial authority could not be said to have been prejudiced by the lack of a statement of issues from Mr Szabo. The judicial authority did not object to the "Rahova point" being taken at the hearing itself, did not request an adjournment, and did not indicate that it intended to seek a further assurance in relation to conditions at Rahova.
62. Mr Stern submitted that, should the appeal be dismissed, any renewed extradition request by the judicial authority would be met by a properly arguable application that the renewed request was an abuse of process. Contrary to the submission made by the judicial authority, the admission of the assurances would prejudice Mr Szabo, who has continued to build his life in the UK and whose first child has been born here. Had he not been discharged by DJ Clews, the family might have relocated to Romania. As in *Hysa* at [142], the court should not admit the assurances at this stage as that would deprive Mr Szabo of the opportunity to advance his argument as to abuse of process.
63. I begin my discussion of this limb of the single ground of appeal by noting that the judge was clearly not wrong to reject the December 2021 Assurance as insufficient to exclude the risk that Mr Szabo's article 3 rights would be infringed at Rahova during the initial 21-day period that he would be expected to be held there.
64. In *Cretu* at [60], Jeremy Johnson J noted Chamberlain J's observation in *Romania v Iancu* [2021] EWHC 1107 (Admin) ("*Iancu I*") at [35] that Steyn J had not reached a positive conclusion that the November 2018 Assurance was sufficient. Jeremy Johnson J added that Steyn J "did not reach a positive conclusion that the [November 2018 Assurance] was insufficient". That is true. Chamberlain J makes the same point in *Iancu I* at [34]. However, at [34]-[35], Chamberlain J also agreed with the district judge below in that case that one could draw an "overwhelming inference" from Steyn J's judgment in *Gheorghe* that she considered the November 2018 Assurance to be insufficient in relation to Rahova. That, with respect, seems right to me.
65. The December 2021 Assurance is, in substance, the same as the November 2018 Assurance as it relates to Rahova. Each guarantees that the requested person will have a minimum personal space of 3 square meters. The only other substantive assurance provided in relation to Rahova in each case is:
  - i) under the November 2018 Assurance:

"Throughout all this time [the 21-day quarantine period at Rahova], the person deprived of liberty may exercise all of his

rights specified in the law regarding the enforcement of prison sentences ...”; and

ii) under the December 2021 Assurance:

“In this period [the 21-day quarantine period at Rahova], the prisoners may exercise all their rights provisioned by the execution law ...”.

66. Mr Szabo does not contend that the March 2022 Assurance and the April 2022 Assurance are insufficient. He is right not to do so. The March 2022 Assurance was found in *Marinescu* to be reliable and sufficient to exclude the risk of the appellants’ article 3 rights from being infringed at Rahova: see *Marinescu* at [57]-[63].

67. The April 2022 Assurance, which was prepared in response to a specific request from the UK in relation to Mr Szabo and the expected initial 21-day period of detention at Rahova, guarantees that he will be held in a room where he will have a minimum personal space of 3 square meters and provides several pages of detail on issues such as the facilities in each cell (“holding room”), lighting, ventilation, furniture, sanitary facilities, hygiene, water supply (including supply of hot water for bathing), heating, and the right to a daily walk for 2 hours as well as other activities outside his cell, including the right to purchase items, participate in educational, psychological, and social assistance activities, have access to sports grounds set up in the unit, and to consult on legal matters through visits and on-line communications outside the cell.

68. It follows that if these assurances are admissible, then the appeal must be allowed. Having regard to the summary of the relevant principles in *Hysa* at [132], the assurances should be admitted for the following reasons:

i) On this appeal, I may admit either or both assurances, each of which is offered for the first time at the appeal stage.

ii) Each assurance is not fresh evidence but rather is an “issue” for purposes section 29(4) of the 2003 Act.

iii) Each assurance (and, *a fortiori*, both together) would have resulted in the judge deciding the relevant question differently if it had been placed before the judge, namely, that there was no material risk of a breach of Mr Szabo’s article 3 rights at Rahova.

iv) In my discretion, having regard to the considerations referred to in *Hysa* at [132(5)-(6)], I consider that I should admit each assurance.

69. My reasons for reaching the conclusion set out at [68(iv)] are as follows. I have already indicated that the issue of tactical conduct or bad faith by the judicial authority does not arise on this case. Although article 3 was raised as an issue at the initial hearing in this case, it is not reasonable, in my view, to consider that the judicial authority should immediately have realised the nature of the article 3 challenge that Mr Szabo would raise at the extradition hearing in the absence of any indication prior to the extradition hearing, Mr Szabo having failed to comply with the direction given at the initial hearing that he provide a statement of issues. I accept that a statement of issues is not necessarily

an elaborate document, and I also note that the judicial authority in its opening note for the extradition hearing, which was included in the appeal hearing bundle, had noted that “Article 3” was raised as an issue. The judicial authority was not, however, alerted to the fact that the focus of the challenge would be on conditions at Rahova. Had even that minimal indication been given, the judicial authority might have been better able to anticipate the challenge that was eventually articulated at the extradition hearing.

70. As Mr Stern noted in his own submissions, article 3 challenges in Romanian cases are commonly raised. But this cuts both ways. On the one hand, it is expected. On the other hand, it is not necessarily known (and particularly not before *Marinescu* was decided) how the challenge would be formulated. In this regard, I note the comment of Sir Ross Cranston in *Bobirnac v Romania* [2023] EWHC 700 (Admin) at [43]:

“43. What the appellant characterises as inconsistencies in the Romanian approach [to the provision of prison assurances] in this and other cases I see as attempts to meet points raised by this and other appellants in Romanian prison cases. As I suggested in argument, given what Mr Ball described as the frequently mutating challenges being directed by appellants regarding Romanian prison conditions, my view was that the October assurance was very much ‘belt and braces’ as the respondent attempted to anticipate possible objections to Dr Halchin’s assurance. **There has been a changing landscape of challenges in this court based on Romanian prison conditions and the respondent has been playing catch-up.**” (emphasis added)

71. In my view, Mr Stern was overstating the position when he submitted that by the time of the initial hearing, much less the extradition hearing, what amounts to a sufficient prison assurance in Romanian cases was well-established and well-known. To the contrary, the case law suggests that there was considerable variation and ingenuity in the way these challenges were being mounted by requested persons, such that it was necessary for a particularly strong Divisional Court in *Marinescu* (which was a lead case behind which a number of other cases, including this one, were stayed) to resolve a number of the questions raised.
72. While it was possible that the judicial authority could have anticipated the challenge that was raised by Mr Szabo at the extradition hearing, it was, in my view and with respect to the judge, not fair to the judicial authority for the judge (i) to treat the initial hearing on 19 November 2021 as, in effect, the date of notice of the need for an assurance that would meet Mr Szabo’s Rahova challenge, which was at that stage completely unparticularised, and (ii) to treat the date of the extradition hearing on 14 March 2022 as a deadline that the judicial authority had missed.
73. In *Iancu I*, the judicial authority’s appeal was dismissed because it missed, with no good explanation, a clear deadline for further information set by the district judge. That did not happen in this case. In the specific circumstances of this case, the judge was wrong, in my view, not to adjourn the case to permit the judicial authority to obtain a

further assurance that would meet the specific challenge mounted by Mr Szabo at the extradition hearing.

74. Regarding Mr Stern's complaint about the delay in providing the April 2022 Assurance, I noted that it was requested specifically for this case after the extradition hearing and obtained relatively quickly. No explanation has been given for the lapse of 17 days between its receipt by the judicial authority and the judicial authority's application for it to be admitted in these proceedings. I note also, however, that 17 days is not a particularly long time in this context and could be explained by any number of commonplace issues that affect the timing of governmental and bureaucratic processes. No deadline had been set by the court for this assurance to be provided, and therefore no deadline was missed. Although the judicial authority has not offered an explanation for the 17-day gap, I do not consider that the delay is material to my exercise of my discretion to admit the April 2022 Assurance.
75. Regarding Mr Stern's complaint about the delay in providing the March 2022 Assurance, I consider that it was provided, in the words of Sir Ross Cranston in *Bobirnac* at [43] as 'belt and braces', given that it was specifically accepted and approved by the Divisional Court in *Marinescu*. While it is true that no explanation has been given for the roughly four-week period between the hand-down of *Marinescu* and the judicial authority's application to admit the March 2022 Assurance, I do not consider that to be a particularly long time in the absence of a specific deadline set by the court and where some time will have been spent by the judicial authority with its advisors reflecting on the significance of *Marinescu*.
76. As to the much longer gap between the date of the March 2022 Assurance and the date of the judicial authority's application for it to be admitted in these proceedings, a period of over seven months, I have no reason to doubt the submission made on behalf of the judicial authority that it did not realise the relevance of the March 2022 Assurance for this case until after reading the Divisional Court's judgment in *Marinescu*.
77. I also confirm my view that the April 2022 Assurance is sufficient, without the March 2022 Assurance, to have resulted in the judge reaching a different decision on the relevant question.
78. In relation to Mr Stern's submissions summarised at [61] above, I note that *Greco* was principally concerned with article 3 compliance in prison conditions where more than two but less than three square metres per detainee was guaranteed for each detainee. The Divisional Court gave guidance as to the additional assurances (regarding freedom of movement out of cell, available activities for the detainee, and other matters) that might be sufficient, when considered cumulatively, to rebut the strong presumption of a violation of article 3 that arose, as noted in *Muršić*, when the personal space available to a detainee falls below 3 square metres in multi-occupancy accommodation. It is worthy of note that the Divisional Court in *Greco* was of the view (at [50]-[52]) that the judicial authority should be permitted a further and final opportunity to remedy the situation by providing additional assurances, there being "the greatest incentive to foster the extradition system". The December 2021 Assurance relied on in the judicial authority's opening note guaranteed a minimum of three square metres throughout Mr Szabo's imprisonment and included a considerable amount of detail about the conditions in which he would be held for all but the first 21 days at Rahova. The judge accepted in the Judgment at paragraph 44 that the judicial authority had provided

adequate assurances in relation to Mr Szabo's article 3 rights in respect of his detention in prisons other than Rahova. I also note that, although the judicial authority did not seek an adjournment of the hearing, it did attempt to deal with the Rahova Issue as raised by Mr Szabo by seeking, unsuccessfully, to have the *Gheorghe* material admitted.

79. I do not consider that Mr Szabo is prejudiced by the admission of these assurances. The only example of potential prejudice put forward by Mr Stern in his submissions was the development of Mr Szabo's private and family life in the UK. It will be open to Mr Szabo to raise an objection to extradition on the ground of infringement of his rights under article 8 of the ECHR at a further extradition hearing to be held following the success of this appeal. At that hearing, it will be open to Mr Szabo to argue that the further development of his private and family life in the UK since the extradition hearing on 14 March 2022 means that the balancing exercise should now result in the conclusion that his article 8 rights would be infringed if he were to be extradited.
80. In summary, in relation to this first limb of the ground of appeal, in the specific circumstances of this case, after careful consideration, I conclude that the judge was wrong simply to have discharged Mr Szabo on the ground of there being an inadequate assurance in relation to Rahova. It would have been open to the judge either (i) to have adjourned the hearing (on his own motion, if necessary) in order to allow the judicial authority a final opportunity to provide an adequate assurance in relation to Rahova or (ii) to have made an *Aranyosi* request. In relation to (i), he would have been amply justified in taking this course given Mr Szabo's failure to provide a statement of issues or otherwise to give adequate and fair notice of the way he would be putting the article 3 point at the hearing. In relation to (ii), I deal below with the separate question of whether the judge was obliged to make an *Aranyosi* request before discharging Mr Szabo.
81. My conclusion on this limb of the ground of appeal is sufficient to determine this appeal, however as the other two limbs were argued, I will also give my views on them.

*Refusal to admit the Gheorghe material*

82. In relation to the second limb of the ground of appeal, Mr Ball submitted that, in making his case management decision refusing to admit the *Gheorghe* material, the judge erred. He should have admitted the material given Mr Szabo's failure to particularise his case at all and his repeated breach of directions made prior to the extradition hearing. The judge was wrong to say that "the issue was raised long ago." Article 3 was raised at the initial hearing, as in virtually every Romanian case, but there are a "host" of ways in which an article 3 argument can be put. The lack of particularisation of the argument prior to the extradition hearing meant that the judicial authority was effectively ambushed.
83. Mr Stern submitted that this issue was settled in *Cretu*, where Jeremy Johnson J at [72] upheld the district judge's case management decision not to admit the *Gheorghe* material.
84. I agree with Mr Stern. It was within the scope of the judge's discretion as to case management to refuse to admit the *Gheorghe* material, for reasons given by the judge, namely:

- i) the *Gheorghe* material could not simply be “read across” as being of general application; and
- ii) the material was provided at a late stage of the hearing, while it was in progress, leaving Mr Stern with, in the judge’s assessment, “no realistic opportunity to respond” beyond the general objections as to lateness and inability to “read [the materials] across” to this case.

85. Although the judge did not specifically comment on the age of the *Gheorghe* material, it would have been reasonable to reject the *Gheorghe* material on the basis that it had been prepared over two years earlier, and this may well have been the principal basis for his view that the materials could not simply be “read across”. Although the information given in the January 2020 Letter and the walking schedule is in generic terms, the judicial authority was not offering an assurance from an appropriate authority in Romania that the conditions described in that material continued to hold true in relation to Rahova as of March 2022.

*Failure to make an Aranyosi request*

86. In relation to the third limb of the ground of appeal, Mr Ball submitted that the judge was wrong to order Mr Szabo’s discharge without having made an *Aranyosi* request. The *Aranyosi* procedure summarised in *Mohammed v Portugal* applies in relation to article 613(2) of the Trade and Cooperation Agreement, which is in substance the same as article 15(2) of the Framework Decision. Article 613(2) is a mandatory requirement with which the judge failed to comply.

87. In reply to these submissions, Mr Stern submitted that, having regard to the specific text of article 613(2) of the Trade and Cooperation Agreement, the judge was only obliged to make an *Aranyosi* request if he concluded that there was a need to seek further information. In this case, the judge was entitled to conclude that there was no need to seek further information, the judicial authority having had a fair opportunity to provide a sufficient assurance in relation to Rahova, which it failed to do. While acknowledging that the facts of *Iancu I* are different to this case, Mr Stern submitted that *Iancu I* nonetheless usefully illustrates that a judge is not obliged to make an *Aranyosi* request in circumstances where the judicial authority has had a fair opportunity to deal with a point that it ought to have dealt with by the time of the extradition hearing.

88. In light of my decision in relation to the first limb of the ground of appeal, it is perhaps already clear that I consider that the judge was not obliged to make an *Aranyosi* request. In the specific circumstances of this case, given the way the Rahova Issue arose at the extradition hearing, the judge would have been justified in adjourning the extradition hearing to permit the judicial authority additional time to seek an assurance directly addressing the Rahova Issue, without himself making an *Aranyosi* request. If, however, he was not prepared to do adjourn the hearing on that basis, then, on these facts, fairness to the judicial authority required that the judge should himself make an *Aranyosi* request. As this is a case-specific decision, I do not consider that I have articulated any principle that would result in “an endless cycle of requests for further information contrary to the time limits set out in article 615 [of the Trade and Cooperation Agreement]”, as submitted by Mr Stern at paragraph 33 of his skeleton argument.

*Conclusion*

89. For the foregoing reasons, I will:

- i) allow the judicial authority's application dated 25 April 2022 for the April 2022 Assurance to be admitted in these proceedings;
- ii) allow the judicial authority's application dated 11 October 2022 for the March 2022 Assurance to be admitted in these proceedings; and
- iii) allow this appeal, quash the order discharging Mr Szabo, remit the case to the judge, and direct the judge to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.