Courts and Tribunals Judiciary

IN THE WESTMINSTER MAGISTRATES' COURT

BEFORE

Senior District Judge Goldspring (Chief Magistrate) for England and Wales

B E T W E E N

THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA

-v-

TOPER HASSAN

Ms Townshend appeared on behalf of the Requesting State

Mr Caldwell KC appeared on behalf of the Requested person.

JUDGMENT

Preliminary Matters

1.The Government of Moldova ("the Requesting State, RP) seeks the extradition of Toper HASSAN ("The Requested Person, RP"). The Applicant is a male dual citizen of the Republic of Northern Cyprus ("TRNC") and the UK and is aged 58 (DOB: 01.08.1966). The Requesting State seeks the RP's extradition to prosecute him for an alleged offence of conspiratory to murder committed on 10 July 2024. A preventative measure of arrest was issued by the investigative Judge in Moldova on 13 August 2024. The maximum sentence for this offence is 15-20 years. The Secretary of State certified the Request on 9 October 2024 and on 29 August 2024, a provisional arrest warrant at Westminster Magistrates' Court followed.

2. Moldova is designated a part 2 territory and as such these proceedings are governed by part 2 of the Extradition Act 2003 (EA 2003), the Extradition Act 2003 (commencement and savings) order (SI 2013 of 2003) and the Extradition Act 2003 (Designation of part 2 territories) (SI 3334 of 2003 Pursuant to paragraph 3 of the same Order, Moldova is also designated for the purposes of sections 71(4), 73(5), 84(7), and 86(7) of the 2003 Act. There is no requirement for prima facie evidence to be adduced by the Government. The RP was arrested on a provisional arrest warrant on 30 August 2024 at Stansted airport; the Applicant having flown from Istanbul, Turkey.

The Request

3.The request alleges that the RP had the role of organising logistics for the commission of the murder of Izzet EREN1. His role can be summarised as follows. Kemal ARMAGAN recruited the RP, Kel

ADNAN and others to plan the murder of Izzet EREN. Between 6 July 2023 and 3 July 2024, the RP visited Moldova four times. On 15 June 2024, the RP with ARMAGAN flew from Larnaca in Cyprus to Chișinău in Moldova where they arranged accommodation until 10 July 2024 in several apartments, one of which was an apartment rented by the RP. ADNAN had arrived earlier, on 7 July 2024 and stayed at the same apartment.

4. An unstable 9 mm calibre weapon, ammunition for the weapon, an electric bicycle, camouflage clothes were purchased, and a car was rented. All defendants studied the way of life, the itinerary, the route where the victim, EREN was travelling. On 10 July 2024, having received information that EREN would be in the "Coffee Point" in Chișinău, ADNAN with ARMAGAN drove there.

5.ARMAGAN put on his camouflage outfit, armed himself with the 9 mm calibre gun, got on his electric bicycle and went to Coffee Point whilst ADNAN drove in another direction to wait for ARMAGAN. Around 11:30am ARMAGAN approached EREN and fired 7 shots at his head and back, instantaneously killing him. ARMAGAN cycled to ADNAN's car and then left on foot to the apartment, whilst ADNAN headed to the Leusenui.

6. After the murder was committed, the Applicant instructed his partner Irina NAUTEVICI to destroy the surveillance camera that had been installed on the balcony of his apartment: "atr. Bodgan Voivod 1/E, apart no. 88 Chisinau, MD-2068" which she owns where he stayed with Kemal ARMAGAN and Irina NAUTEVICI when he arrived in Moldova, and after the alleged murder with Kemal ARMAGAN until he left the country (between 15 and 29 June 2024 he stayed in an Air BnB property: No. 532, 4 Florarii Street.

7. The camera recorded what happened in his apartment, the travel route, and the area where the murder was committed. It was ascertained that the camera and the internet browsing device in the Applicant's apartment had connections with the devices held by Kemal ARMAGAN at the time of the murder was committed.

8. The allegation in the request is a part of a wider pattern of inter gang violence, the context of which is important background. This background of interlinked shootings and transnational retribution killings provides critical context to the current proceedings. I set out the interrelated cycle of violence to highlight the context in which the challenges are framed and the prism through which the court views the issues, it is not intended, nor should it be read as findings of any fact related thereto, where a dispute arises as to the facts I have made findings below.

On 8 March 2009, Kenan Aydogdu was shot and injured while in the company of Ali Armagan, brother of Kemal Armagan. Less than two weeks later, on 22 March 2009, a targeted shooting resulted in the murder of Ahmet Paytak and the injury of his son. Ricardo Dwyer and Michael James were convicted of this murder, though Kemal Armagan remains wanted in connection with the offence.

9. Violence escalated throughout 2009. On 3 October 2009, Oktay Erbasli was fatally shot while stopped at traffic lights in Tottenham, reportedly by a lone assailant on a high-powered motorcycle. Within days, on 5 October, 21-year-old Cem Duzgun, affiliated with the Hackney Turks, was shot dead at a social club in Upper Clapton Road. Four men were convicted in relation to his murder. Following these incidents, Kemal Armagan fled the United Kingdom.

10. This cycle of targeted killings and reprisals continued into 2010 and beyond. On 15 August 2010, another attempt was made on the life of Kenan Aydogdu. Two years later, in 2012, Ali Armagan himself was shot and killed. Kemal Eren—cousin of Izzet Eren and a leading figure in the Tottenham

Boys—was suspected of orchestrating this murder, though he fled to Turkey prior to any trial proceedings. It extended into Turkey. On 1 December 2012, Kemal Eren was seriously wounded in a shooting in Elbistan, Turkey. Later that month, on 30 December, another cousin, Inan Eren, was ambushed outside his home in Enfield and shot three times. He survived but remains physically impaired. In 2013, Zafer Eren, brother to Izzet Eren, was fatally shot in Southgate. Jamie Marsh-Smith and Samuel Zerei were convicted of this murder, while Beytullah Gunduz—allegedly linked to the Hackney Turks—was acquitted.

11. killed in Turkey. Kemal Armagan is wanted by Turkish authorities in connection with this murder and attempted murder related to the same incident, and he is currently detained in Turkey under an Interpol Red Notice.

12. The violence has continued in recent years. In November 2019, a conspiracy to murder Beytullah Gunduz—allegedly orchestrated by Kemal Eren from Turkey—was intercepted by law enforcement. The following year, in 2020, Huseyin Eren was fatally shot in Elbistan, Turkey. Kemal Armagan has also been arrested in connection with this murder. On 21 August 2020, Gunduz survived another attempted murder in London, having been shot in the neck.

13. The latest incidents show no sign of de-escalation. On 29 May 2024, a drive-by shooting in London resulted in the injury of three men and a 9-year-old girl. Gunduz was believed to have been the intended target. On 10 July 2024, Izzet Eren—the most prominent surviving member of the Tottenham Eren clan—was shot dead in Chisinau, Moldova.

FORMAL REQUIREMENTS

15. At the initial stages of the Extradition hearing the appropriate judge must decide if the documents set out in Section 78(2)(a) EA 2003 are included within the documents sent by the Secretary of State, the particulars of the requested person are set out in within the request itself (Section 78(2)(b)), the particulars of the offence specified in the request are set out in the request(section 78(2)(c)) and that the papers include a certificate of conviction for the requested person(section 78(2)(e).

16. In addition section 78(4) EA 2003 requires the judge to satisfy himself as to the identity of the person before him at the hearing is the requested person, that the request discloses an extradition offence (section 78(4)(b)) and whether copies of the papers sent to the judge from the secretary of state have been served upon the requested person.(section 78(4)(c) EA 2003).

17. Although no challenge on any of the above matters is raised, I must nonetheless satisfy myself that each requirement is met. I have done so and each is met.

18. Although not formally raised as a challenge I am nonetheless obliged to satisfy myself that the requests set out conduct (or each offence), along with the supporting documents that disclose extradition offences as required by section 137 of the 2003 Act as amended.

19. Section 137(2) & (3) provides:

(2) The conduct constitutes an extradition offence in relation to the category 2 territory if the conditions in subsection (3), (4) or (5) are satisfied.

(3) The conditions in this subsection are that— (a) the conduct occurs in the category 2 territory.

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment if it occurred in that part of the United Kingdom.

(c) the conduct is so punishable under the law of the category 2 territory.

20. I am satisfied so that I am sure that the request discloses extradition offences.

21. There is evidence that the defendant agreed with at least one other person to carry out a course of conduct that would necessarily involve the unlawful killing of another person, it was intend that the course of conduct agreed upon would result in the death of that person (or persons), or someone within a class of persons and the defendant intended to play a part in that agreement, knowing the purpose was to kill, that is capable of sufficing, if proven, to amount to the offence conspiracy to Murder contrary to S1 of the Criminal Law Act 1977.

22. Thus, an extradition offence is made out on the conduct disclosed in the request.

Challenges raised.

23. The Requested Person challenges extradition on the following grounds:

- Extradition is barred by reason of 'extraneous considerations' due to the political imperatives driving these proceedings, **S81 (b) EA 2003**

- Extradition is incompatible with his rights under **Article 3, ECHR**, due to either inter prisoner violence or ill health or a combination of the 2.

- Extradition is incompatible with his rights under **Article 8, ECHR**,

The Legal Framework

Extraneous Considerations – Section 81

24. Section 81 of the Act provides that a person's extradition is barred by reason of extraneous considerations if (and only if) it appears that:

(a) the request for his extradition (though purporting to be made on account of the extradition offence) is in fact made 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.

25. The test to be applied in relation to section 81 of the Act is whether there is a "reasonable chance", or "substantial grounds for thinking", or a "serious possibility" that an extraneous circumstance will occur (per ***Fernandez v. Government of Singapore [1971] 1 WLR 987***, and Lord Diplock at p.994G-H; applied in ***Hilali v. Spain [2006] EWHC 1239 (Admin).***

26. To rely on section 81, a defendant cannot simply point to a general risk of prejudice, rather he or she must be able to show that there is a causal link between the proceedings themselves, or the likely prejudice, and the identified ground (see, for example, the judgment of Simon J in ***McKenzie v. Examining Court No 9 Palma de Mallorca [2008] EWHC 3187 (Admin))***. Moreover, the burden is on a defendant to show that causal link ***(Hilali Supra***).

27. Where reliance is placed on the "consequences limb" (section 81(b)), the Court must "predict" the prejudice a requested person might suffer as a result of one of the identified grounds (***Slepcik*** ibid.).

28. The applicable legal principles were considered by Burnett J, as he then was, in the case of ***Nikolics v. The City Court of Szekszard (Hungary) [2013] EWHC 2377*** at §15 of his judgment where he stated:

> "***15. In considering whether the evidence establishes the section 13(b) test there is an important background feature in cases involving category 1 territories, because they are members of the European Union and state parties to the Convention. There is an assumption that such states will vindicate the convention rights of those returned to them: see Gomez and Goodyear v. The Government of the Republic of Trinidad and Tobago [2009] 1 WLR 1038 at para 35; Krolik and others v. Several Judicial Authorities of Poland [2013] 1 WLR 490 at paras 3-7 and Rot v. District Court of Eubin Poland 2010 EWHC 1820 (Admin) at paras 10-11.***

29. However, in ***Agius v. Malta [2011] EWHC 759 (Admin)*** Sullivan LJ noted that the assumption that the state party to the ECHR would abide by its obligations was:

> ***capable of being rebutted by clear cogent evidence, which establishes that, in any particular case, extradition would not be compatible with the defendant's convention rights.***

30. That approach, developed in the context of arguments under section 21 of the 2003 Act that extradition would violate convention rights, is no less appropriate when considering questions which arise under Section 13(b). Therefore, there is an assumption that the Hungarian judiciary will try the appellant fairly, not discriminate against him on grounds of his Roma race and not impose different custodial requirements, either on remand or following conviction, as a result. However, that assumption is capable of being displaced by cogent evidence."

31. Further, ***in The Government of Turkey v. Ozbek [2014] EWHC 3469 (Admin),*** the Divisional Court considered the sort of evidence that was required for a requested person to surmount the hurdle under section 81 as per Cranston J at §§18 to 20:

32. In ***Nikolics v Hungary [2013] EWHC 2377 (Admin)*** a Roma alleged that he would face racial prejudice from Hungarian judges if extradited to stand trial for theft and argued that extradition was barred under section 13(b) of the 2003 Act. The District Judge had rejected this. There was evidence about the discrimination against the Roma in Hungary, the overrepresentation of Roma in the criminal justice system there, and the disturbing political situation in the country. Burnett J applied Fernandez and Hilali against the background of the presumption operating in favour of the judicial authorities in Hungary, a member of the European Union and a signatory to the European Convention of Human Rights. The evidence, he held, did not demonstrate a "serious possibility" or "substantial grounds for thinking" that the circumstances contemplated by section 13(b) might come to pass and he dismissed the appeal.

33. Thus, the test for considering whether extradition is barred because of mistreatment by reason of the factors set out in section 81(b) is whether there is a "reasonable chance", "substantial grounds for thinking" or "a serious possibility" of this occurring.

34. This test is less demanding than that in Article 3 of the Convention, where those resisting extradition must show strong grounds for believing that, if returned, they will face a real risk of being

subjected to torture or to inhuman or degrading treatment or punishment, or the test in Article 6, where it must be shown that a person has suffered or risks suffering a flagrant denial of a fair trial (***Ullah v Special Adjudication [2004] 2 AC 323***, paragraph 24 per Lord Bingham).

35. Nonetheless, the outcome of the three cases I have mentioned, Fernandez, Hilali and Nikolics (Supra) , where the requested person was not able to surmount the bar set by the equivalent of section 81(b), demonstrates the type of evidence needed to be adduced for the court to conclude that there is a current risk of mistreatment by reason of extraneous circumstances."

Section 87 – Human Rights

Section 21 EA 2003 – Human Rights- Art 3 – PRISON CONDITIONS

36. The test to be applied in Article 3 cases is whether there are "strong grounds" for believing there would be a "real risk" of a breach of article 3 the RP were to be extradited: ***R (Ullah) v Special Adjudicator [2004] UKHL 26, §24***

37. The general principles were recently restated by the Grand Chamber in ***Mursic v Croatia (2016) App 7334/13, October 20*** at §§96-141 (underlining added), which held that:

> *"…96. Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour…in the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured…*

38. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, while being a factor to be considered, does not conclusively rule out a finding of a violation of Article 3 of the Convention…

39. When inmates appeared to have at their disposal personal space measuring between 3 and 4 sq. m the Court examined the (in)adequacy of other aspects of physical conditions of detention when making an assessment under Article 3. In such instances a violation of Article 3 was found only if the space factor was coupled with other aspects of inappropriate physical conditions of detention related to, in a particular context, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements…

40. The Court would also observe that no distinction can be discerned in its case-law with regard to the application of the minimum standard of 3 sq. m of floor surface to a detainee in multi-occupancy accommodation in the context of serving and remand prisoners…

41. Specifically, in relation to presumed compliance with Article 3, the strength of any presumption of compliance with the ECHR within a Council of Europe member state will necessarily be context specific. As the Supreme Court recently underlined in ***Zabolotnyi v The Mateszalka District Court, Hungary [2021] UKSC 14,*** any consideration of whether a requesting state will abide by

commitments it has made in the context of extradition proceedings is a fact-sensitive exercise. Any presumption of compliance is in any event rebuttable and is "most readily rebutted where the Court of Human Rights has issued a 'pilot judgment' against the requesting state in question. Under Rule 61 of the Court's rules a pilot judgment can be made where there are '... structural or systematic problems or other similar dysfunction...' which leads to multiple applications to the Court about the same issue": ***Iosekvich v Government of the Russian Federation [2018] EWHC 696 (Admin***) [Green J, with whom Hickinbottom LJ agreed] at §43.

42. In 2021, the Divisional Court had held in ***Tabuncic v Moldova [2021] EWHC 1269 (Admin), [2021] A.C.D. 86, [2021] 5 WLUK 170*** that assurances given by Moldova that there was no substantial risk of inter-prisoner violence affecting two requested persons if they were extradited were not reliable and did not show that there was no risk that they would not be subjected to violence in prison in violation of ECHR art.3. The Divisional Court had stated that assurances given by Moldova in future cases relating to such matters would have to be carefully scrutinised.

43. In Tabani, Moldova had submitted requests for the extradition of the three appellants. It provided assurances in respect of each appellant as to which prison cells they would be detained in if they were extradited. In light of those assurances, the district judge concluded that Moldova had proved that the appellants would not face a real risk of torture and/or inhuman or degrading *treatment or punishment contrary to art.3., the court held.*

> *The district judge had carried out a detailed and careful analysis of the case. She had done so against the backdrop of there having been no extraditions to Moldova since 2020, and the Divisional Court having expressed itself in particularly trenchant terms in Tabuncic, Tabuncic considered. The position had improved considerably since 2021, at least in relation to the designated areas in the two prisons under consideration in the instant case. Many of the appellants' submissions failed to differentiate sufficiently between the overall position in Moldova and the position in the two institutions under consideration. Their submissions also failed to pay sufficient regard to the risk to the appellants from the consequences of inter-prisoner violence in light of Moldova's assurances. The judge had properly approached the case on the basis that the burden was on Moldova to show that there was no real risk of violation, and she could not be said to have been wrong to conclude that, in all the circumstances, the detailed assurances could be relied on and thereby discharged that burden. Post-decision evidence adduced by the appellants did not alter or undermine that position; in many ways, it confirmed it. It followed that the judge was right to conclude that Moldova had proved that the appellants would not face a real risk of torture and/or inhuman or degrading treatment or punishment contrary to art.3 (see paras 72, 74-75, 94 of judgment).*

44. In ***Miklis v Deputy Prosecutor, Lithuania (2006) ECHR 1032 (admin)*** Lord Justice Latham stated, in dismissing Mr Miklos` appeal,

> "The fact that human rights violations take place is not of itself evidence that a particular individual would be at risk of being subjected to those human rights violations in the country in question. That depends upon the extent to which the particular individual could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse". Where the prison system of the requesting state does or might have systemic problems capable of crossing the threshold to establish an arguable breach of the ECHR the requesting state will often provide an assurance.

45. The principle of mutual recognition must not be applied automatically and mechanically to the detriment of fundamental rights (***Bivolaru v France [2021] 3 WLUK 914, §101).***

46. Where harm emanates from non-state bodies, here other prisoners, it will not constitute Article 3 illtreatment unless in addition the state has failed to provide reasonable protection ***(R (Bagdanavicius) v Secretary of State for the Home Department [2005] UKHL 38, §24).*** This approach applies in the context of extradition and inter-prisoner violence (***Lord Advocate v Dean [2017] UKSC 44,*** §27).Protection means both a willingness and ability to provide protection from harm, referring to deterrence and/or prevention, not just after-the-event punishment of third parties for harm caused ***(Bagdavicius,*** §55). Absence of reasonable or sufficient protection implies "systemic" default (***ZV (Lithuania) v SSHD [2021] EWCA Civ 1196***, §35).

47. The risk "depends upon the extent to which the particular individual in question could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse" (***Miklis v The Deputy Prosecutor General of Lithuania [2006] EWHC 1032 (Admin)*** (§11).

Moldova specifically

48. In ***Tabuncic and Coev v. Moldova [2021] EWHC 1269 (Admin)*** the Divisional Court (Stuart-Smith LJ and Holgate J) discharged the Appellant. At §§39 to 40 the Court found that the evidence in relation to interprisoner violence tipped the balance in favour of the Appellants. The balance was tipped further once the evidence in relation to a breach in Mr Simionescu's case was taken into account. Further, at §42, the Court found that the assurances provided in those cases did not meet the substantial risk that had been identified. At §42, the Court stated:

> *"The existence of a strong prisoner sub-culture was accepted by the District Judge and was not addressed by the Respondent's assurances. They offered a limited response on what would, or should, happen in the event that interprisoner violence or intimidation occurred: they did not provide grounds for assurance that the substantial and unacceptable risk of violence or intimidation would be obviated in the first place. For these reasons, shortly stated, we would have decided this appeal in favour of the Appellants even on the basis of the materials that were before the Court below."*

49. The Court highlighted the fact that the RPs' evidence had been available for months and that no information had been provided to rebut it (§ 43). However, the Court went on to state:

> *"While these appeals have not been set up to be test or lead cases in relation to Moldova, the fact that they are, so far as is known, the first to have reached the higher courts means that assurances given and assertions made by the Respondent in future cases will have to be scrutinised with particularly anxious care."*

50. In ***Ciorici, Tomsa, Lungu and Codreanu v Moldova, DJ Tempia sitting at Westminster Magistrates' Court (on 2 February 2024 and 26 April 2024***) considered an almost identical assurance to the one relied on in this case, and almost identical evidence (report of Mr Tugushi and various open-source reports from international human rights associations, in particular the September 2023 CPT report). She rejected the Requested Persons' Article 3 argument and found the Requesting State's assurances adequate.

51. Lord Justice Coulsen and Mr Justice Jay upheld DJ Tempia's decision and dismissed the requested persons appeals in ***Ciorici, Coldreanu and Lungu v Government of Moldova [2025] EWHC 809 (Admin) on 3 April 2025***. The Court's findings on Article 3 ECHR can be summarised as follows:

(i) The Court had received "little to no assistance" from the Requesting State in the previous Moldovan case of Tabunicic and Coev (§73). As set out above at §27, the Court in that case found that absent any assurances (since they were not forthcoming in that case), there was a real risk of Article 3 ECHR mistreatment. In Ciorici, the Court confirmed that they had scrutinised the Requesting State's assurances with particularly anxious care, as advised in Tabunicic and Coev.

(ii) The Court found that "the position has improved considerably since 2021, at least as regards to the designated areas in the two prisons presently under consideration" (§74).

(iii) At least 23 Council of Europe States currently extradite to Moldova, with and without assurances (§74). It is relevant that there has only been two reported cases of breaches.

(iv) Many of the Appellants' submission fail to differentiate between the overall position in Moldova and the position of the two particular institutions under consideration; and in addition, failed to pay sufficient regard to the risk to the Appellants in light of the assurances given with regards to inter-prisoner violence (§75).

(v) Leova 3, Block 4: the District Judge was correct to find that the Requesting State's assurances were sufficient to ameliorate the Article 3 risk (§81). The Court relied upon Mr Tugushi's evidence that prisoners felt relatively safe there and that the insidious effect of the informal hierarchy were not felt within Block 4 (§76). The Court also held that relatively low number of prison guards does not materially impact the risk of inter-prisoner violence since the informal hierarchy was outside Block 4 (§78). In addition, in Leova, the Court found that the numbers of reported injuries to be relatively low, presumably owing to their location within Block 4 (§79).

(vi) In respect of Mr Coldreanu, a sex offender, he would be held alone in both prisons or with another sex offender. Although the regime "falls far short of the ideal" it would not be "so impoverished as to amount to a violation of Article 3" (§80). The Court went on: "Mr Codreanu would not face an unacceptable risk from the informal hierarchy but we see some of the force of Ms Grudzinka's argument that he would be at risk from other prisoners simpliciter. However, what she has not demonstrated is that, with whatever Article 206 protection" is necessary, such a risk might amount to a breach of his Article 3 rights." (ibid.).

(vii) General inter-prisoner violence, as opposed to violence generated due to the informal prison hierarchies was found not to have "reached such a point that any district judge would be driven to conclude that the assurances are insufficient" (§84).

(viii) Chișinău: the Court accepted Mr Tugushi's evidence that prisoners felt relatively safe and that there was no evidence that anyone under Article 206 protection was interfered with by the informal hierarchy (§87).

(ix) The assurances can be relied upon; they were given in good faith and the two breaches of the assurances did not mean that the assurances could not be trusted (§§91-93). The explanation provided for the breaches was "satisfactory" and there has been a lack of any further breaches which must be taken into consideration (§92).

Assurances

52. The significance of foreign state assurances was considered by the Supreme Court ***in MT (Algeria) v Secretary of State for the Home Department [2009] UKHL 10, [2010] 2 AC 110*** and

applied in the extradition context in ***Sunca v Iasi Court of Law [2016] EWHC 2786 (Admin)*** where four conditions, sometimes called the Othman criteria, were identified as relevant to the weight and credibility of the assurance in question:

53. Where the ordinary presumption of Article 3 compatibility has been displaced (e.g. in light of a pilot judgment), then the burden shifts to the requesting state to demonstrate that Article 3 will not be contravened: ***see Badre v Italy [2014] EWHC 614 (Admin)*** per Hickinbottom J (as then was) at §65.

54. Once assurances are requested and / or provided the court is obliged to scrutinise them in accoradance with the ***Othman criteria***. Those criteria are :-

> *" 188. In assessing the practical application of assurances and determining what weight is to be given to them, the preliminary question is whether the general human rights situation in the receiving State excludes accepting any assurances whatsoever. However, it will only be in rare cases that the general situation in a country will mean that no weight at all can be given to assurances (see, for instance, Gaforov v . Russia, no. 25404/09, § 138, 21 October 2010; Sultanov v . Russia, no. 15303/09, § 73, 4 November 2010; Yuldashev v . Russia, no. 1248/09, § 85, 8 July 2010; Ismoilov and Others, cited above, §127).*
>
> *189. More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving State's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:*
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> *(i) whether the terms of the assurances have been disclosed to the Court (Ryabikin v . Russia, no. 8320/04, § 119, 19 June 2008; Muminov v . Russia, no. 42502/06, § 97, 11 December 2008; see also Pelit v . Azerbaijan, cited above);*
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> *(ii) whether the assurances are specific or are general and vague (Saadi¸ cited above; Klein v . Russia, no. 24268/08, § 55, 1 April 2010; Khaydarov v . Russia, no. 21055/09, § 111, 20 May 2010);*
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> *(iii) who has given the assurances and whether that person can bind the receiving State (Shamayev and Others v . Georgia and Russia, no. 36378/02, § 344, ECHR 2005-III; Kordian v . Turkey (dec.), no. 6575/06, 4 July 2006; Abu Salem v . Portugal (dec.), no 26844/04, 9 May 2006; cf. Ben Khemais v . Italy, no. 246/07, § 59, ECHR 2009-… (extracts); Garayev v . Azerbaijan, no. 53688/08, § 74, 10 June 2010; Baysakov and Others v . Ukraine, no. 54131/08, § 51, 18 February 2010; Soldatenko v . Ukraine, no. 2440/07, § 73, 23 October 2008);*
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> *(iv) if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them (Chahal, cited above, §§ 105-107);*
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> *(v) whether the assurances concerns treatment which is legal or illegal in the receiving State (Cipriani v . Italy (dec.), no. 221142/07, 30 March 2010; Youb Saoudi v . Spain (dec.), no. 22871/06, 18 September 2006; Ismaili v . Germany, no. 58128/00, 15 March 2001; Nivette v . France (dec.), no 44190/98, ECHR 2001 VII; Einhorn v . France (dec.), no 71555/01, ECHR 2001-XI; see also Suresh and Lai Sing, both cited above)*

(vi) whether they have been given by a Contracting State (Chentiev and Ibragimov v . Slovakia (dec.), nos. 21022/08 and 51946/08, 14 September 2010; Gasayev v . Spain (dec.), no. 48514/06, 17 February 2009);

(vii)the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances (Babar Ahmad and Others, cited above, §§ 107 and 108; Al-Moayad v . Germany (dec.), no. 35865/03, § 68, 20 February 2007);

(viii) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers (Chentiev and Ibragimov and Gasayev, both cited above; cf. Ben Khemais, § 61 and Ryabikin, § 119, both cited above; Kolesnik v . Russia, no. 26876/08, § 73, 17 June 2010; see also Agiza, Alzery and Pelit, cited above);

(ix) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible (Ben Khemais, §§ 59 and 60; Soldatenko, § 73, both cited above; Koktysh v . Ukraine, no. 43707/07, § 63, 10 December 2009);

(x) whether the applicant has previously been ill-treated in the receiving State (Koktysh, § 64, cited above); and

(xi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State (Gasayev; Babar Ahmad and Others¸ § 106; Al-Moayad, §§ 66-69).

55. The House of Lords in ***Gomes and Goodyer v. Trinidad and Tobago [2007] EWHC 2012 (Admin)*** emphasised the mutual trust which must be accorded to requesting states, at §33 as follows:

"The extradition process, it must be remembered, is only available for returning suspects to friendly foreign states with whom this country has entered into multi-lateral or bilateral treaty obligations involving mutually agreed and reciprocal commitments. The arrangements are founded on mutual trust and respect. There is a strong public interest in respecting such treaty obligations. As has repeatedly been stated, international cooperation in this field is ever more important to bring to justice those accused of serious cross-border crimes and to ensure that fugitives cannot find safe havens abroad."

56. This was reiterated in relation to the Respondent United States of America by the Divisional Court (Lord Burnett CJ and Dingemans J) in ***Giese v. United States of America [2018] EWHC 1480 (Admin)*** at §47:

"We start by reminding ourselves that the United States of America, and its constituent states including California, is a mature democracy governed by the rule of law. The assurance given by the District Attorney has been transmitted by the Department of Justice as a solemn promise between friendly states who have long enjoyed mutual trust and recognition. Assurances have been accepted routinely from the Government and the promises made have been honoured."

Life without parole

57. There are several ECtHR cases which set out the key principles governing Article 3 ECHR and "irreducible" life sentences. In Vinter and Others v UK18, the Court held that for a sentence of life imprisonment to be compatible with Article 3, there had to be a possibility of review and a possibility of release. Were it otherwise, a prisoner could be forcibly deprived of their freedom without striving towards their rehabilitation and providing him/her with the chance to regain that freedom at a later date. This would be incompatible with the rehabilitative purpose of incarceration and with the fundamental human dignity of the prisoner. The review required by Article 3 had to permit an assessment of any changes in the prisoner's circumstances and any progress made towards rehabilitation.

58. The following principles on the subject can be derived from ECtHR caselaw:

(i) The imposition of a life sentence is not in itself incompatible with Article 3 ECHR; contracting states are free to impose such sentences.21

(ii) No issues arise if a life sentence is both de jure and de facto reducible. However, the imposition of a life sentence may raise an issue under Article 3 ECHR where it is de jure or de facto irreducible.

(iii) Where domestic law provides no mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 arises at the moment of the imposition of that sentence.

(iv) When determining whether a sentence is irreducible, the court has to ascertain whether a life prisoner can be said to have any prospect of release. However, a life sentence does not become irreducible by the mere fact that in practice it may be served in full. If a prisoner is refused release on the grounds that s/he poses a danger to the public, no Article 3 issue would arise since a State has an obligation to protect the public.18 (***Apps. 66069/09, 130/10 and 3896/10), [2013] ECHR 645.19 Vinter and Others, [113]. 20 Vinter and Others, [119]. 21 Kafkaris v Cyprus (2009) EHRR 35 [99] and Vinter and Others, [106]. 22 Kafkaris, [97] and Vinter and Others, [107]-[108]. 23 Vinter and Others, [122]. 24 Kafkaris, [98]; Vinter and Others, [108]; Murray, [99].***

(v) Where national law affords a sufficient possibility of review with a view to the commutation, remission, or termination of the life sentence, or conditional release, this will be sufficient to satisfy Article 3.25

(vi) It is not for the court to determine when that review ought to take place, but comparative and international law materials show clear support for a dedicated review mechanism to guarantee a review no later than 25 years after the imposition of a life sentence, with further periodic reviews thereafter.

(vii) In Vinter at [199], the essence of the required review was described as follows:

> *"… a review which allows the domestic authorities to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds".*

(viii) "… [A] whole life prisoner is entitled to know… what he or she must do to be considered for release and under what conditions".28 Consequently, the assessment must be based on rules which have a sufficient degree of clarity and certainty.29 It must also be based on objective and established criteria.

(ix) The review must have sufficient procedural guarantees and be safeguarded by access to judicial review.

(x) As noted above, the State must also provide sufficient opportunity for the prisoner to rehabilitate themselves, so that they can in practice avail themself of the review mechanism.

59. As the court explained in Murray at [13]: "… a life prisoner must be realistically enabled, to the extent possible within the constraints of the prison context, to make such progress towards rehabilitation that it offers him or her the hope of one day being eligible for parole or conditional release. This could be achieved, for example, by setting up and periodically reviewing an individualised programme that will encourage the sentenced prisoner to develop himself or herself to be able to lead a responsible and crime-free life". In the case of mentally ill prisoners, the state may also be required to assess their needs and provide suitable treatment.

(xi) In determining whether a prisoner has, de facto, any prospect of release, it may be relevant to take account of statistical information on prior use of the review mechanism, including the number of persons who have been granted release

60. The ECtHR held that Article 3 imposed a universal standard in relation to life sentences and ruled that Belgium could not extradite a prisoner to the U.S. to face a life sentence. The U.S. system of reviews of sentences of life without parole were insufficient and gave rise to a breach of Article 3. However, our domestic courts have declined to follow Trabelsi when considering extradition from the U.K. to the U.S. In Hafeez v United States34 and Sanchez v United States35. In both cases the High Court held that the U.S. system was compliant with the Convention, as it offered a sufficient prospect of release to satisfy the requirements of Article 3.36 Whilst that scheme only permitted release on compassionate grounds and did not contemplate release based purely on a prisoner's progress in rehabilitating himself, rehabilitation could be relevant combined with other factors. Such factors included legitimate penological grounds such as punishment and deterrence. The other route to release, namely executive clemency, could also be taken into account as the review mechanism required by Article 3 did not have to be judicial. That route had clear criteria set out in guidance documents.

61. In ***Sanchez-Sanchez v UK (2023) EHRR 16,*** [at 95-96], the ECtHR overruled Trabelsi, emphasising the need to appreciate the different contexts between domestic and extradition cases. The Court held that Trabelsi had not addressed, as a preliminary step, the question of whether there had existed a real risk that the applicant would be sentenced to life without parole. The Court held that the life sentence that the applicant would serve in the U.S. if extradited was not irreducible, noting the two routes by which a prisoner could seek a reduction in sentence: compassionate release and executive clemency. The Court set down the following two stage test for the extradition context:

(i) Has the applicant adduced evidence capable of proving that there are substantial grounds for believing that if extradited, and in the event of conviction, there is a real risk of a sentence of life imprisonment without parole? It is for the applicant to demonstrate that such a penalty will be imposed. Such a risk will more readily be established if the applicant faces a mandatory sentence of life imprisonment.

(ii) If so, it must be ascertained by the relevant authorities of the sending state that there exists in the requesting state a mechanism of sentence review which allows the competent authorities there to consider whether any changes in the life prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.

Section 21 EA 2003 – Human Rights- Article 8 Challenge

62. Article 8 ECHR states,

i). Everyone has the right to respect for his private and family life, his home and his correspondence.

Ii). There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health of morals or for the protection of the rights and freedoms of others.

63. The principles for the application of Article 8 in extradition cases were set out by the United Kingdom Supreme Court in ***Norris –v- Government of United States of America [2010] UKSC 9*** and subsequently refined in ***HH v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25***. The fact-specific balancing exercise is well-known to this Court and does not bear repetition here.

64. The legal principles in relation to extradition and Article 8 ECHR is well trodden and settled law, it is not in dispute but as the UKSC made clear in ***Andrysiewicz (Appellant) v Circuit Court in Lodz, Poland*** (Respondent) ***[2025] UKSC 23***. is often not appropriately deployed in extradition cases, it is often raised in cases which come nowhere near threshold described by the Justices of the Supreme Court, the court dealt with the question of Article 8 and the proper approach as below, it is for this reason that I have approached the challenge in the way I have, given the high public interest in this case and the distinct lack of any feature that could be described as a case where the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life be exceptionally severe."

65. In ***Andrysiewicz (Appellant) v Circuit Court in Lodz, Poland [2025] UKSC 23***. (Respondent), the Justices held

> *The role of article 8 in extradition cases*
>
> *31.The purpose of extradition arrangements is to secure the return of an individual to another State to stand trial for an alleged criminal offence or to serve a sentence imposed under the laws of that State. In a conviction case such as the present, the purpose is to restore the defendant into the control of the requesting State, whose laws the defendant has been found to have broken, in order to serve a sentence lawfully imposed in that State. Subject to considerations of human rights in the law of the requested State, it is for the requesting State to decide issues of punishment and rehabilitation. In the present case the Polish judicial authority sought the return of the appellant to serve a custodial sentence which was originally suspended but subsequently implemented after she failed to comply with its conditions. The consequences of such a breach are matters for the Polish authorities.*
>
> *32. The certified questions need to be considered against the background of the role of article 8 in extradition cases. What does article 8 require?*
>
> *33. In Norris v Government of the United States of America (No 2) [2010] UKSC 9; [2010] 2 AC 487, the role of article 8 in extradition proceedings was addressed in detail by this court. The US Government sought the extradition of Mr Norris to stand trial on three counts of conspiracy to obstruct justice. It was common ground that, as in most extradition cases, the extradition of Mr Norris would interfere with his exercise in the United Kingdom of his right to respect for his private and family life under article 8 and that this interference would be in accordance with the law. In his judgment Lord Phillips of Worth Matravers explained (at para*

9) that the critical issue in the case was whether this interference was necessary in a democratic society for the prevention of disorder or crime. Resolving that issue involved a test of proportionality: the interference must fulfil a pressing social need, and it must also be proportionate to the legitimate aim relied upon to justify the interference. Having surveyed the Strasbourg and domestic jurisprudence he expressed the following conclusions.

(1) While there can be no absolute rule that any interference with article 8 rights as a consequence of extradition will be proportionate, the public interest in extradition nonetheless weighs very heavily indeed. It carries special weight when considering the interference extradition would cause to article 8 rights. It was certainly not right to equate extradition with expulsion or deportation in this context. It is of critical importance in the prevention of disorder and crime that those reasonably suspected of crime are prosecuted and, if found guilty, duly sentenced. Extradition is part of the process for ensuring that this occurs on a basis of international reciprocity (paras 51, 52).

(2) Referring to the exceptions to the right to liberty under article 5 in the case of the arrest and detention of a suspect and detention while serving a sentence following conviction, he observed that such detention will necessarily interfere drastically with family and private life. However, in practice it was only in the most exceptional circumstances that a defendant would consider even asserting his article 8 rights by way of challenge to remand in custody or imprisonment. "Normally it is treated as axiomatic that the interference with article 8 rights consequent upon detention is proportionate." (para 52). Until recently it had also been treated as axiomatic that the dislocation to family life that normally follows extradition as a matter of course is proportionate. (para 54).

(3) Rejecting a submission that it was wrong for the court when approaching proportionality to apply a categorical assumption about the importance of extradition in general he observed: "Such an assumption is an essential element in the task of weighing, on the one hand, the public interest in extradition against, on the other hand, its effects on individual human rights. This is not to say that the latter can never prevail. It does mean, however, that the interference with human rights will have to be extremely serious if the public interest is to be outweighed." (para 55) "The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves." (para 56).

(4) Referring to the judgment of the European Commission on Human Rights in Launder v United Kingdom (1997) 25 EHRR CD 67, 73, he continued:

"'Exceptional circumstances' is a phrase that says little about the nature of the circumstances. Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition. A judge should not be criticised if, as part of his process of reasoning, he considers how, if at all, the nature and extent of the impact of extradition on family life would differ from the normal consequences of extradition." (para 56).

(5) Deciding whether extradition will be compatible with Convention rights is a fact-specific exercise. "[A]t this point … it is legitimate for the judge to consider whether there are

any relevant features that are unusually or exceptionally compelling. In the absence of such features, the consideration is likely to be relatively brief. If, however, the nature or extent of the interference with article 8 rights is exceptionally serious, careful consideration must be given to whether such interference is justified." (para 62).

(6) In such a situation the gravity, or lack of gravity, of the offence may be material (para 62). Rejecting a submission that the gravity of the offence can never be of relevance where an issue of proportionality arises in the human rights context, Lord Phillips continued: "The importance of giving effect to extradition arrangements will always be a significant factor, regardless of the details of the particular offence. Usually, the nature of the offence will have no bearing on the extradition decision. If, however, the particular offence is at the bottom of the scale of gravity, this is capable of being one of a combination of features that may render extradition a disproportionate interference with human rights. Rejecting an extradition request may mean that a criminal never stands trial for his crime. The significance of this will depend upon the gravity of the offence." (para 63).

(7) "When considering the impact of extradition on family life, this question does not fall to be considered simply from the viewpoint of the extraditee." (para 64) After referring to an immigration case, Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39; [2009] AC 115, he continued: "[T]he family unit had to be considered as a whole, and each family member had to be regarded as a victim. I consider that this is equally the position in the context of extradition." (para 64) "Indeed, in trying to envisage a situation in which interference with article 8 might prevent extradition, I have concluded that the effect of extradition on innocent members of the extraditee's family might well be a particularly cogent consideration. If extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge the extraditee under section 87 of the 2003 Act." (para 65).

"One has to consider the effect on the public interest in the prevention of crime if any defendant with family ties and dependencies … was thereby rendered immune from being extradited to be tried for serious wrongdoing. The answer is that the public interest would be seriously damaged. It is for this reason that only the gravest effects of interference with family life will be capable of rendering extradition disproportionate to the public interest that it serves." (para 82).

34. In a concurring judgment, Lord Hope of Craighead, at para 87, stated:

"It would not be right to say that a person's extradition can never be incompatible with his right to respect for his family life under article 8 of the European Convention on Human Rights. But resisting extradition on this ground is not easy. The question in each case is whether it is permitted by article 8(2). Clearly some interference with the right is inevitable in a process of this kind, which by long established practice is seen as necessary in a democratic society for the prevention of disorder or crime. That aim extends across international boundaries, and it is one which this country is bound by its treaty obligations to give effect to."

Lord Hope did not think that there were any grounds for treating extradition cases as falling into a special category which diminished the need to examine carefully the way the process

would interfere with the individual's right to respect for his family life (para 89). He considered, at para 91, that:

"…[T]he reality is that it is only if some exceptionally compelling feature, or combination of features, is present that the interference with the article 8 right that results from extradition will fail to meet the test of proportionality. The public interest in giving effect to a request for extradition is a constant factor, and it will always be a powerful consideration to which great weight must be attached. The more serious the offence the greater the weight that is to be attached to it. … Separation by the person from his family life in this country and the distress and disruption that this causes, the extent of which is bound to vary widely from case to case, will be inevitable. The area for debate is likely to be narrow. What is the extra compelling element that marks the given case out from the generality? Does it carry enough weight to overcome the public interest in giving effect to the request?"

35. In his concurring judgment Lord Brown of Eaton-under-Heywood agreed (at para 95) that it would be only in the rarest cases that article 8 would be capable of being successfully invoked under section 87 of the Extradition Act 2003. He expressly endorsed the observation of Lord Phillips that only the gravest effects of interference with family life will be capable of rendering extradition disproportionate to the public interest it serves. Referring (at para 95) to Lord Phillips' example concerning impact on innocent family members at para 65 (para 33(7) above) as a rare case where the "defence" might succeed, he added that it was difficult to think of many others, particularly where the charges were plainly serious. He concluded (at para 99):

"Seemingly it is now the section 87 (section 21 in Part 1) 'defence' based on the extraditee's article 8 rights which is regularly being invoked. The incidence of this too may be expected to decline in the light of the court's judgments on the present appeal. The reality is that, once effect is given to sections 82 and 91 of the Act, the very nature of extradition leaves precious little room for a 'defence' under section 87 in a 'domestic' case. To my mind section 87 is designed essentially to cater to the occasional "foreign" case where (principally although not exclusively) article 2 or 3 rights may be at stake."

36. This court returned to the question of article 8 in the context of extradition in H(H) v Deputy Prosecutor of the Italian Republic, Genoa [2012] UKSC 25, [2013] 1 AC 338 ("H(H)"). In the joined appeals before the Supreme Court the return of the individual was sought pursuant to a European arrest warrant in order that they might either stand trial or serve custodial sentences in the requesting State. Each resisted extradition on the ground that it would be incompatible with their and their children's rights to respect for their private and family life under article 8. One issue was therefore: where the rights of children of a defendant are arguably engaged, how should their interests be safeguarded?

37. In her judgment, at para 8, Baroness Hale of Richmond drew the following conclusions from Norris.

"(1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in extradition: that

people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no "safe havens" to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

We consider that the shift from the reference to "private and family life" in (6) to "family life" in (7) was deliberate.

38. We also note the following particularly relevant note of caution sounded by Lord Judge CJ (at para 132):

"At the same time, we must exercise caution not to impose our views about the seriousness of the offence or offences under consideration or the level of sentences or the arrangements for prisoner release which we are informed are likely to operate in the country seeking extradition."

39. In Polish Judicial Authority v Celinski [2015] EWHC 1274 (Admin), [2016] 1 WLR 551 ("Celinski") a Divisional Court of the Queen's Bench Division (Lord Thomas of Cwmgiedd CJ, Ryder LJ and Ouseley J) took the opportunity to restate the correct approach to article 8 in extradition cases in the light of Norris and H(H). It considered that, in applying the principles set out in those cases the following matters should be borne in mind:

(1) H(H) was concerned with the interests of children (para 8).

(2) The public interest in ensuring that extradition arrangements were honoured was very high (para 9).

(3) The decisions of the judicial authority of a Member State of the EU making a request should be accorded a proper degree of mutual confidence and respect (para 10).

(4) The independence of prosecutorial decisions must be borne in mind when considering issues under article 8 (para 11).

(5) In the case of accusation warrants, it should be borne in mind that factors that mitigate the gravity of the offence or culpability will ordinarily be matters that the court in the requesting State will take into account. Although personal factors relating to family life will be factors to be brought into the balance under article 8 by a court considering extradition, these will also form part of the matters considered by the court in the requesting State in the event of conviction (para 12).

40. Turning to conviction warrants the court made the following observations (at para 13):

(1) "The judge at the extradition hearing will seldom have the detailed knowledge of the proceedings or of the background or previous offending history of the offender which the sentencing judge had before him."

(2) "Each member state is entitled to set its own sentencing regime and levels of sentence. Provided it is in accordance with the Convention, it is not for a UK judge to second guess that policy. The prevalence and significance of certain types of offending are matters for the requesting state and judiciary to decide; currency conversions may tell little of the real monetary value of items stolen or of sums defrauded. For example, if a state has a sentencing regime under which suspended sentences are passed on conditions such as regular reporting and such a regime results in such sentences being passed much more readily than the UK, then a court in the UK should respect the importance to courts in that state of seeking to enforce noncompliance with the terms of a suspended sentence."

(3) "It will therefore rarely be appropriate for the court in the UK to consider whether the sentence was very significantly different from what a UK court would have imposed, let alone to approach extradition issues by substituting its own view of what the appropriate sentence should have been."

41. The Divisional Court went on to point out (at para 14) that these basic principles had not always properly been taken into account at extradition hearings. In particular, a structured approach had not always been applied to the balancing of factors under article 8. It suggested, in para 16, that:

"The approach should be one where the judge, after finding the facts, ordinarily sets out each of the 'pros' and 'cons' in what has aptly been described as a 'balance sheet' in some of the cases concerning issues of article 8 which have arisen in the context of care order or adoption: see the cases cited at paras 30—44 of In re B-S (Children) (Adoption Order: Leave to Oppose) [2014] 1 WLR 563. The judge should then, having set out the 'pros' and 'cons' in the 'balance sheet' approach, set out his reasoned conclusions as to why extradition should be ordered or the defendant discharged."

The Divisional Court also stated, at para 14, that it should rarely, if ever, be necessary to cite to the court hearing the extradition proceedings or on an appeal, decisions in other individual cases which are invariably fact specific. The principles to be applied were those set out in Norris and H(H).

42. Contrary to Lord Brown's prediction in Norris, the incidence of extradition cases in which article 8 is invoked has shown no sign of declining. On the contrary, it appears that it is continuing unabated. We were told by Mr Louis Mably KC that a random and unscientific sample of contested extradition hearings before the Westminster Magistrates' Court between 10 and 21 March 2025 showed that article 8 was invoked in 22 out of 23 cases examined. It seems that an article 8 "defence" is raised almost as a matter of course in virtually every extradition case.

43. We have set out above relevant passages in Norris, H(H) and Celinski at some length because it is clear that there is a need to reiterate the essential points they make. Cases in which a submission founded on article 8 ECHR may defeat the public interest in extradition will be rare. It is most unlikely that extradition will be held to be disproportionate on the ground of interference with private life. Even in cases where interference with family life is relied upon, it will only be in cases of exceptionally severe impact on family life that an article 8 ECHR "defence" will have any prospect of success. The possibility of early release

44. Against this background we turn to consider the relevance in conviction cases of the possibility of early release under the law of the requesting State.

45. There will be some cases in which early release from a sentence under the law of the requesting State will operate automatically so that early release can be precisely calculated and predicted. If this is agreed between the parties or can be proved as a matter of the law of the requesting State, taking this factor into account in determining whether extradition is a disproportionate interference with article 8 ECHR should present fewer difficulties than in situations where early release is discretionary. If it is possible to calculate with confidence how such an automatic rule will operate it should be possible to proceed to an article 8 assessment on that basis. In an extreme case, in combination with other exceptionally compelling features it might possibly outweigh the public interest in extradition; that might be so, for example, if it is shown that on an arithmetical calculation a requested person would be entitled to be released within a very short period of time. However, even in the case of an automatic rule as to release on licence, conditions can be attached to the licence for the benefit of, amongst others, the public. Breach of the conditions of a licence may lead to a return to prison. Therefore, in the "pros" list of features which militate in favour of extradition on the "balance sheet" approach adopted in Celinski, at para 16, (see para 41 above) will be the feature that if the requested person is not extradited, the court in the requesting state will be deprived of the opportunity to impose appropriate licence conditions and the offender will be at liberty in this jurisdiction without any such conditions having been imposed.

46. However, cases where early release involves the exercise of judgment or discretion by judicial or executive authorities in the requesting state, such as the present case, cause greater difficulty. In such cases, the judgment or discretion is essentially that of the requesting State and must be exercised by it in accordance with its own law and standards. To what extent, if at all, is it open to a court in this jurisdiction, faced with an extradition application, to second guess the operation of the sentencing regime of the requesting State? As we have indicated there are conflicting decisions in the King's Bench Division in relation to this question with reference to the early release provisions in Poland. Before resolving that conflict, it is appropriate to set out and to make observations in relation to some of the relevant provisions of the Polish Penal Code which empower a Polish court to order the early release of offenders from prison on probationary licence.

Conduct of cases in future

81. In Celinski, in 2015, the Divisional Court pointed out that the basic principles in relation to the role of article 8 ECHR had not always been properly taken into account at extradition hearings. Unfortunately, a decade later, that remains the position: see para 41 above. We emphasise again that "the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life be exceptionally severe." Lord Brown's prediction that the incidence of reliance on the article 8 "defence" "may be expected to decline" will only materialise through robust case management directions and an appreciation by the legal aid authorities as to the hurdle which must be surpassed before deciding to make public funds available to advance such a defence.

82. We endorse Swift J's approach that a court in this jurisdiction should determine, on a case management basis, whether the case is potentially a rare case so that it is appropriate to embark on the task of anticipating the response of a court in the requesting state to an application for the early release on licence of the requested person. Furthermore, even if the case is potentially a rare case, then on a case management basis it is appropriate to consider

whether there is any chance, taking the offender's case at its highest, that any additional weight to be attributed to the possibility of early release in conjunction with other factors could outweigh the public interest in extradition. If not, then there is no need to embark on what would be an unnecessary process which merely causes delay and adds to expense.

Conclusion

83. As we have indicated, at para 8 above, the Polish judicial authority withdrew the extradition warrant and this court ordered the appellant's discharge and quashed the extradition order.

EVIDENCE

66. During the course of the hearing I heard oral testimony from the below witnesses, I carefully considered their written testimony as well as all other materials served, what follows is necessarily and proportionately a summary of their oral evidence, if I have not mentioned or referenced a particular part of their evidence it is not because I have not considered it, it is because it is neither necessary nor proportionate to include verbatim record of their evidence

Mr Tugushi

67. Mr Tugushi, a well-known and respected expert on prison conditions, adopted his 2 reports and added the following –

He has been a member of the European Committee for the Prevention of Torture (CPT) since 2015 and has conducted several visits to Moldova. His expertise includes authoring reports on Moldovan prison conditions, notably in the context of previous extradition cases such as Ciorici. His most recent visit occurred in November 2024, with findings submitted in January 2025 and supplemented by an addendum report in March 2025, which was also used in the Ciorici proceedings.

Mr Tugushi raises serious and ongoing concerns regarding inter-prisoner violence, particularly in the facilities at Leova and Kishener. He describes the violence as systemic and institutionalised, commonly referred to within the prison system as 'the business'. This phenomenon is driven by entrenched criminal hierarchies and tacit cooperation between prisoners and guards. These observations are corroborated by CPT and Ombudsman reports, which also highlight chronic understaffing, inadequate healthcare—such as Leova operating without a medical doctor for three years—and deteriorating infrastructure.

The reluctance of some prisoners to report violent incidents due to fear of reprisals further exacerbates the issue. Block 4, designated for assurance prisoners and recently refurbished, is not purpose-built and suffers from minimal security and staffing shortages, with guards reportedly working 24-hour shifts. Despite meeting EU standards for cell size and cleanliness, the block is not risk-free. Mr Tugushi notes 54 violent incidents, including seven involving assurance prisoners, though underreporting is common.

Healthcare remains a critical concern, with no medical doctor on site and staffing shortages undermining prisoner welfare. RP would initially be held in Kishener and transferred to Leova if convicted. Lifers, such as RP if sentenced to life imprisonment, are sent to Rezina, a high-security prison deemed unsuitable for RP. Mr Tugushi acknowledges that RP's risk profile was not known during earlier visits but asserts that individuals with such vulnerabilities would face heightened risks in Leova due to poor security and the influence of informal prison hierarchies.

Although Block 4 is nominally segregated, it remains accessible to other prisoners, and hierarchies communicate across blocks, undermining safety. Moldovan prisons are influenced by strong prisoner hierarchies, known as 'watchers'. In Chișinău, tacit cooperation between guards and prisoners is more evident, with privileges often obtained through corruption. Prisoners under Article 2 or 6 measures are considered the lowest caste and may be subject to targeted violence.

While assurance prisoners are intended to be protected, the systems in place to enforce this are weak. Mr Tugushi notes that no specific assurances have been provided in RP's case to address his individual risk. CPT reports are typically not responded to by governments. Although Moldovan authorities have attempted improvements, such as increasing activities in Leova, systemic issues persist. Mr Tugushi expresses concern about RP's safety and the adequacy of protection mechanisms.

He concludes that although conditions in Block 4 are relatively better than in other blocks, the prison cannot guarantee safety for someone with RP's risk profile. Violence and lack of control by authorities remain endemic, and assurance mechanisms are insufficiently robust. Mr Tugushi insists on conducting private interviews with prisoners to ensure honesty and confirms that hierarchies still communicate across blocks, maintaining risk even without full control. The continued lack of doctors and systemic staffing shortages further undermine prisoner welfare.

Mr Vieru

68. Mr Vieru, a Moldovan lawyer and human rights expert, provided extensive testimony on prison conditions, systemic corruption, and risks posed by prison subcultures.

69. A summary of his evidence is as follows.

> *Mr Vieru described Moldovan prisons as severely overcrowded, citing, by way of example, a facility holding 828 inmates in accommodation designed for 507. He explained that a subculture linked to Russian criminal hierarchies operates within the prison system, creating particular risks of extortion and violence towards those perceived as wealthy, such as Mr Hassan. He noted that prison staffing levels are inadequate, with as few as four or five guards on duty overnight, and that those guards are poorly paid and susceptible to bribery.*
>
> *He described shortcomings in the operation of protection protocols under Article 206, in particular the absence of confidentiality, which may expose protected inmates to further danger. The limited availability of medical care was emphasised, with some institutions lacking doctors entirely and no psychologists being employed in key prisons. There is, he said, no effective review mechanism for life sentences; amnesties are rare and driven by political considerations.*
>
> *During cross-examination, Mr Vieru confirmed his experience in representing both defendants and victims in life sentence cases. He expressed the opinion, based on Moldovan case law and precedent, that Mr Hassan would be likely to receive a life sentence if convicted.*
>
> *Mr Vieru's oral evidence painted a picture of prison conditions as overcrowded and under-resourced. He referred to small cells, some without windows, with conditions varying according to an inmate's status in the prison hierarchy. Allocation of cells and access to better conditions are, he said, heavily influenced by the prison subculture. Trauma logs are still handwritten and maintained inconsistently. Medical facilities are limited, with some*

establishments entirely without doctors. Of the institutions discussed, Prison 13 and Leova were specifically mentioned, with Leova being regarded as marginally better.

He identified several factors which he considered placed Mr Hassan at heightened risk: the publicity surrounding his case, his perceived wealth, alleged gang affiliations, and the consequent vulnerability to extortion and violence from entrenched prison hierarchies. The absence of effective protective measures, coupled with inadequate staffing, systemic corruption, and the influence of informal criminal leaders such as "Matiana," were said to compound these risks. Mr Vieru's assessment was supported by CPT reports and his own observations, which he said confirmed the persistence of systemic risks and the absence of meaningful reform in the Moldovan prison system.

Dr Roy

70. Dr Roy, a UK psychiatrist, assessed Mr Hassan and found signs of acute stress and early depression. evidence can be summarised as follows.

The Requested Person ("RP") described feeling hopeless, trapped, and in fear for his life. While he denied any current suicidal ideation, his presentation was marked by poor hygiene and low self-esteem. He had been offered mental health support in custody in the United Kingdom but said he was distrustful of such services. Mental health provision in UK prisons is, the evidence confirmed, available and established; the position in Moldova was described as uncertain and unreliable.

Medical records disclosed no current serious illness, although the RP has a family history of colon cancer. It was noted that Moldova's prison healthcare budget is extremely limited, estimated at around €5,000 for the entire prison population. Although colonoscopies are, in principle, guaranteed to inmates, the evidence was that in practice they are rarely undertaken.

Discussion and Conclusions

Section 81(B) – Extraneous Considerations

71. Having considered the submissions I do not find that the bar to extradition under section 81 of the Extradition Act 2003 is made out.

72. The requested person contends that extradition is barred under section 81 on the basis that he would be prejudiced at trial through political weaponisation of the case, and that there is a risk to his personal safety. I reject these arguments for the following reasons.

73. First, while it is correct that imputed political opinions may engage section 81, the requested person has failed to identify with clarity any such opinion said to have been imputed to him. The submission conflates general media interest and political context with a prosecution based on political opinion. That is not the correct application of the statutory bar; if it were, any high-profile individual could evade extradition, which cannot be right. The high water mark of the evidence in support demonstrates a high profile feud which is heavily reported and known to many, a politically motivated prosecution, it is not enough to simply show that the facts are commented upon by politicians, crime and order is an appropriate topic for political comment, but that is all that the evidence discloses here, not that the trial will be prejudiced by such comment.

74. No causal link has been established between any alleged political opinion and the prosecution. There is no evidence that the requesting state seeks to prosecute him for reasons other than the

proper enforcement of criminal law, utilising evidence gathered during an investigation. The offences alleged are serious, and there is ample material to support prosecution. No evidence has been adduced to undermine the legitimacy of the proceedings. Whether that material is sufficient to secure conviction is a matter for the trial court.

75. The assertion that Moldova's judiciary may be unable to resist political pressure is speculative and unsupported by cogent evidence of systemic corruption or lack of independence. Mechanisms exist to safeguard judicial and prosecutorial independence, and notably, the requested person does not rely on Article 6 ECHR.

76. The reliance on media leaks is similarly unpersuasive. The cited article contains only general information already in the public domain and makes no reference to the requested person. The suggestion that such material could prejudice his trial is speculative. The decade-old example from an unrelated bank fraud case does not establish a relevant pattern of conduct.

77. The comparison drawn with the case of Mr Eren is misconceived. That case involved concurrent extradition and asylum proceedings, whereas the present matter concerns purely criminal proceedings. The legislative amendments made by the Moldovan Parliament to address procedural delays are lawful and proportionate.

78. The argument that personal safety is at risk due to imputed political opinions is not a permissible basis under section 81. The manner or quality of detention is irrelevant to this statutory bar (see ***Zadvornovs; Ozbek Supra***).

79. Accordingly, I find that the requested person has not met the threshold required to engage section 81. The application to bar extradition on that ground is dismissed.

Section 87 – Human Rights ARTICLE 3

Findings on Prison Conditions and Assurances

80. The requested person asserts that Moldovan prisons—particularly Chișinău Prison No. 13 and Leova Prison No. 3—fail to meet Article 3 standards due to overcrowding, inter-prisoner violence, and poor material conditions. I find, however, that these concerns have been adequately addressed by the comprehensive assurances provided. Those assurances are near identical to those assessed and accepted by the High Court in ***Ciorici,*** and—contrary to the submission made on behalf of the requested person—this does not undermine their reliability.

81. The allegation that the Moldovan authorities have not considered the specific risks to the requested person and have merely inserted his name into assurances previously given, is both an unfair criticism and a mischaracterisation of the court's task. The question is not whether the drafting process involved "cut and paste," but whether the assurances are sufficient and can be relied upon. It is significant that no allegation of bad faith has been made. In any event, I am satisfied that the Moldovan authorities properly considered whether the assurances previously given were adequate to address the specific risks faced by this requested person. The assurances include detailed measures to ensure his safety and protection.

82. It is worth remembering that the law does not require a counsel of perfection in protective measures, but rather ***adequacy to the individual circumstances of the case***. I am satisfied that the specific and detailed assurances provided here meet that standard. These include:

- *Detention in specific renovated cells in Chișinău Prison with adequate heating, ventilation, and sanitation.*

- *Transfer within 12 months to Leova Prison Block 4, a detention sector dedicated to extradited persons.*
- *A minimum of 4 square meters of personal space per detainee.*
- *Regular access to outdoor activities, healthcare, educational and work opportunities.*
- *Medical care equivalent to that available in civilian institutions, including specialist care when necessary.*

83. In respect of subcultures in the specific parts of the prison where the RP will be housed, I accept the evidence of Mr Tugushi, who found no influence of criminal hierarchy in the designated cells and found the material conditions to be "acceptable.".

Risk of Inter-Prisoner Violence

84. The RP claims that, due to his gang affiliation, he is at particular risk of violence from other prisoners. However, I find that:

85. The RP will be housed in cells and blocks that are isolated from hierarchical prison structures.

86. Protection mechanisms under Article 206 of the Moldovan Enforcement Code provide for immediate and sustained protection in response to any risk.

87. There is permanent supervision of prisoners, and any interaction with other detainees will be closely monitored.

88. Trauma logs are maintained, and acts of violence are thoroughly investigated. The criticism that they are handwritten, difficult to follow and demonstrate evidence of under reporting for fear of reprisal does not significantly take the requested persons case further. The key point relating to trauma logs is that there is a mechanism in place for such incidents to be recorded and dealt with appropriately, if there were a complete lack of reporting mechanisms then of course the argument would be all the stronger.

89. The case of Izzet Eren, relied upon by the RP, does not demonstrate systemic risk. Mr Eren was not the subject of assurances, was not protected under Article 206, and his injuries were minor. His case does not reflect the improved conditions and safeguards now in place.

90. It is of note that Vieru and Tugushi disagreed in respect of the risk of inter prisoner mingling, Tugushi who carried out interviews one-on-one with prisoners and an extensive visited the prison gave evidence that the risk of intermingling between the various parts of the prison was unlikely where is Mr Vieru, who did not carry out personal interviews in private or have as an extensive access to the prison as Mr Tugushi gave evidence that there was a risk of such inter mingling and therefore an additional risk to the safety of the requested person. As far as this court is able to on the limited evidence before it, I preferred the evidence of Mr Tugushi on this point, partly because he carried out individual private interviews but also because it aligned with the evidence provided by the requesting state and was therefore corroborated.

Medical and Mental Health Care

91. The RP contends that his chronic healthcare needs and mental health place him at risk. Specifically, he requires regular colonoscopies and monitoring of his mental health due to suicidal ideation. I am unpersuaded that such issues are sufficient to make good the challenge, in particular I find that:

- *Moldovan prisons provide colonoscopy services through public hospital contracts every two years, in accordance with medical guidance.*
- *The RP will receive medical assessments on entry and as required.*
- *Psychological services, including suicide risk assessment and counselling, are available.*
- *There is no current diagnosis of a significant mental illness in the RP. The evidence suggests monitoring is necessary, but not that extradition would breach Article 3.*

92. These provisions, as detailed in the assurances, are sufficient to safeguard the RP's physical and mental health in detention.

93. The assurances have been given in good faith. I note the extensive cooperation by Moldovan authorities with independent experts and international bodies. Mechanisms to ensure compliance include:

- Independent national monitoring by the People's Advocate and NPM.
- International oversight by CPT and UN CAT.
- An automated prison register to ensure that extradited persons are allocated to specified facilities.
- Past breaches in unrelated cases have been addressed. There is no reason to doubt compliance in the RP's case.

Life Sentence and Review Mechanisms

94. The RP submits that if convicted, he may face an irreducible life sentence. However, I find that:

95. Moldovan law provides for conditional release after 25 years, subject to rehabilitation and public safety.

96. ECtHR jurisprudence does not require release, only the possibility of review. Such possibility exists in Moldovan law.

97. There is no evidence the RP is certain to receive a life sentence; sentencing discretion lies with the Moldovan courts. As such, and in accordance with the case law as set out above the requested person has found to establish with cogent evidence that the risk of an irreducible life sentence is made out the challenge must therefore be rejected.

Conclusion

98. In light of the above, I conclude that the RP has not established substantial grounds for believing that he would be subjected to treatment contrary to Article 3 ECHR if extradited.

99. I find the assurances provided by the Requesting State to be detailed, credible, and sufficient. They eliminate any real risk of ill-treatment.

100. Accordingly, I find that extradition is compatible with the RP's rights under Article 3 ECHR.

Section 87 – Human Rights Art 8 ECHR

101. As a result of the case law this court is obliged to consider all relevant factors and balance one against another. The interests of children are a primary consideration, but other factors include but are not limited to.

- The public interest in honouring extradition treaties,
- The Article 8 rights of victims, as well as the RP and his family
- The gravity of the offences,
- The strong public interest in ensuring that children are properly brought up,
- Delay and whether during the lapse of time the RP and (if relevant) family have made a new and blameless life for him/ themselves
- The age of the requested person at the time of the conviction.
- The UK should not be treated as a safe haven by those avoiding prosecution or sentences in other EU States

102. Thus, the balancing exercise is set out below; -

Factors in favour of surrender

- There is a significant public interest in ensuring that those wanted for prosecution in other states are surrendered for that purpose. That is all the truer when, as here, the allegations are serious.
- The offences for which she is sought to stand trial are undoubtedly serious. The conspiracy to Murder allegation is axiomatically serious.

Factors in favour of Discharge

- The RP person does have some age-related and commensurate health concerns including the risk of bowel cancer and the need 4 monitoring in relation to colonoscopy treatment.
- It is accepted by the requesting state that there is an enhanced risk of harm created by his alleged involvement in organised crime and gangland violence.

Conclusion on Article 8

103. It should be noted that, as in many cases, the requested person has chosen not to give evidence. This raises a question as to the admissibility and weight to be attached to the evidential basis for his Article 8 claim. Ordinarily, the requested person would give evidence on oath, be subject to cross-examination by the requesting state, and the court would make findings on contested matters. It is for the requested person to establish the evidential basis for the submission that extradition would amount to a disproportionate interference with his ECHR rights. In the absence of a proof of evidence and oral testimony, there is a real question as to whether any evidence exists on which the court could properly assess the Article 8 claim.

104. The RP's claim is advanced essentially on the same footing as the other challenges—that is, the alleged risk of inhumane treatment arising from his particular exposure to gang violence. To the extent that there is some unchallenged evidence before the court as to his involvement in such violence—which indeed forms part of the prosecution case—I am prepared, in these circumstances, to take those risks into account when assessing the Article 8 claim. However, matters relating to his personal circumstances, other than healthcare, have not been considered, as they have not been properly placed before me in admissible evidential form**.**

104. The test articulated in In ***Andrysiewicz (Appellant) v Circuit Court in Lodz, Poland*** (***Supra***) makes clear that it will be a rare case where the balance falls in favour of discharge, and even more the case where children and sole parent considerations are not present, the court said-

> ***We emphasise again that "the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life be exceptionally severe."***

105. In balancing the competing factors, I am clear that the public interest in bringing to justice those alleged to have committed the most serious crimes, particularly in the context of organised violent crime, is axiomatically high. The requested person may have placed himself at risk of retribution, which is a factor capable of weighing in favour of discharge, however, having concluded that the assurances provided by the Moldovan authorities are sufficient to protect him from such violence in the event of extradition, I find that this factor does not outweigh the public interest in a case of this nature.

106. Similarly, the healthcare concerns raised are neither significant nor severe and are adequately addressed by the assurances given. I have no hesitation in concluding that neither individually nor collectively do any of the factors approach the level required to render interference with family life exceptionally severe, or to outweigh the compelling public interest in extradition.

Decision

107. Thus, having carefully considered all of the submissions and evidence in this case I have concluded that the prosecution is not one barred by section 81 of the extradition act, and neither are the requested persons convention rights under articles 3 and or 8 disproportionately interfered with and I therefore send the case to the Secretary of State pursuant to section 87(3) EA 2003.

Paul Goldspring

Senior District Judge (Chief Magistrate) for England and Wales

20th August 2025