Prisacaru v. Belgium and Romania App. No 8339/15

Written comments of Fair Trials

Introduction

1. Fair Trials submits these written comments in accordance with the permission to intervene granted by the President of the Second Section by letter of 13 December 2017 in accordance with Article 36(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") and Rule 44(3) and (4) of the Rules of the Court. Fair Trials has been assisted in the preparation of these submissions by Alex Tinsley (Barrister, Church Court Chambers).

2. This case concerns the application of Convention rights to the European Union (the "EU") Framework Decision 2002/584/JHA on the European Arrest Warrant (the "**EAW Framework Decision**"). Fair Trials seeks to assist the Court by placing the Court's relevant case-law into the context of the implementation of the EAW Framework Decision. We address the Court on the gradual but, as yet, insufficient recognition of the place of fundamental rights in the EAW system, and suggest how the Court could proceed in the context of the opportunity presented by this case.

Relevant Case-Law of the Court

3. This case raises issues related to the application of four areas of the Court's case-law to the EAW Framework Decision and its implementation: (i) Contracting States' Convention responsibility when executing international obligations; (ii) Contracting States' Convention obligations in extradition proceedings; (iii) obligations of Contracting States to provide an effective remedy when Article 3 issues are raised; and (iv) the extent to which minimum space limitations constitute an infringement of Article 3.

<u>Obligations of Contracting States in the context of cooperation systems regulated by EU law</u>

4. The Court's case law on international organizations, including obligations deriving from membership of the EU, has established that, when implementing international obligations, Contracting States are not absolved of Convention responsibilities. Action taken in compliance with international obligations is justified only as long as there is protection in place at least equivalent to that under the Convention in terms of the substantive guarantees and their enforcement (*Bosphorus v. Ireland* (2005), §§ 152-154).[i] In the context of EU membership, the presumption will be that an EU Member State has not departed from the requirements of the Convention when it does no more than implement EU obligations. However, that presumption may be rebutted where the protection of Convention rights was manifestly deficient *Michaud v. France (2016)*, §§ 102-104).[ii]

5. The Court distinguishes between unqualified, mandatory EU obligations (e.g. *Bosphorus v. Ireland* (2005), *Avotiņš v. Latvia* (2016)[iii]) and EU obligations allowing for the exercise of discretion (e.g. *M.S.S. v. Belgium and Greece* (2011)[iv], *Michaud v. France (2016)*) (as to the distinction, see *Avotiņš v. Latvia* (2016), §§ 106-107). The question whether sufficient protection was provided in the context of an EU system may depend upon whether there was a serious issue arising as to how EU

law obligations should be interpreted compatibly with fundamental rights, such as to justify a reference to the CJEU for a preliminary ruling (see *Avotiņš v. Latvia* (2016), §§ 109-111).

6. The Court recognises that the EU law obligations include requirements of mutual recognition which may require EU Member States to presume that fundamental rights have been observed by EU Member States (see *Avotiņš v. Latvia* (2016), §§ 114, in relation to CJEU *Opinion 2/13* (2014))[v]. However, the principle of mutual recognition may not be applied automatically and mechanically. If a serious and substantiated complaint is raised to the effect that the protection of a Convention right has been manifestly deficient and that this situation cannot be remedied by EU law, EU Member States cannot refrain from examining that complaint on the sole ground that they are applying EU law (*Avotiņš v. Latvia* (2016), § 116).

Obligations of Contracting States in the extradition context

7. The Court has held that extradition may engage the extraditing state's responsibility under Article 3 where there are serious grounds to believe that if the person is extradited to the requesting country he would run a real risk of being subjected to treatment contrary to Article 3 (originally *Soering v. United Kingdom*, restated recently in *Lopez Elorza v. Spain* (2017) [vi], § 102). A prospective Article 3 risk may arise from, *inter alia*, detention conditions in the state to which extradition / expulsion is contemplated (see, for example. *Tershiyev v. Azerbaijan* (2014),[vii] § 54; *M.S.S. v. Belgium and Greece* (2011), §§ 366-367; *Tarakhel v. Switzerland* (2014),[viii] §§ 93-122; *Chankayev v. Azerbaijan* (2013)[ix], §§ 72-74).

8. For the assessment of risk, the Court attaches weight to information from reliable and objective sources, such as agencies of the UN, reputable domestic or international human-rights protection associations or other states, and reports of the Commissioner of Human Rights of the Council of Europe (see the cases referred to in *Tershiyev v. Azerbaijan* (2014), § 48). Moreover, where the prospective risk issue relates to detention conditions in a Contracting State, the court has had regard to its own decisions under Article 3 against that particular state, including, in particular, pilot judgments issued pursuant to Article 46 of the Convention recognising systemic issues across the prison estate (see, in relation to conditions in Russian pre-trial remand prisons, *Tershiyev v. Azerbaijan* (2014), § 54, and in relation to Russian post-conviction penal institution, *Chankayev v. Azerbaijan* (2013), § 73, both referring to the Article 3 pilot judgment concerning both types issued in *Ananyev v. Russia* (2012))[x].

9. Where assurances have been provided by the receiving State, they constitute a further relevant factor. However, assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill‑treatment. The weight to be given to assurances from the receiving State depends, in each case,

on the circumstances prevailing at the material time (*Saadi v Italy (2008)*,[xi] § 148; *Mamzhonov v. Russia (2014)*,[xii] § 134).

Obligations of Contracting States to provide an effective remedy when Article 3 issues are raised

10. Where issues are raised in relation to prospective risk of Article 3 violations, the Contracting State concerned is under a duty to scrutinise that complaint carefully. Under Article 3, the Court will inquire into whether the individual's claim has been adequately assessed by the competent national authorities and whether their conclusions were sufficiently supported by relevant material (*Mamzhonov v. Russia (2014)*, § 137). Article 13 requires the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law (*M.S.S. v. Belgium and Greece* (2011), § 288).[xiii] Moreover, Article 13 requires independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and an effective means of suspending the enforcement of measures whose effects are potentially irreversible (in the extradition context, see *Chankayev v. Azerbaijan* (2013), § 89;[xiv] in the context of cooperation under EU law obligations, see *M.S.S. v. Belgium and Greece* (2011), § 293).[xv]

The extent to which minimum space limitations constitute an infringement of Article 3

11. Finally, it is relevant to this intervention to consider the now fairly clear circumstances in which the Court recognises that absence of minimum space will (alone) constitute an infringement of Article 3 in the domestic context (which is now also treated as the yardstick in the extradition context). The Court's case-law has firmly established that: each detainee must have an individual sleeping space in the cell; each detainee must have at his or her disposal at least 3sqm of floor space; and the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items (*Ananyev v. Russia* (2012) §§ 145, 148)).[xvi] When the personal space available to a detainee falls below 3sqm of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The strong presumption of a violation of Article 3 will normally be capable of being rebutted by the respondent Government only if the following factors are cumulatively met: (1) the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor; (2) such reductions are accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; (3) the applicant is confined in what is, when viewed generally, an appropriate detention facility, and there are no other aggravating aspects of the conditions of his or her detention (*Muršić v. Croatia* (2016), § 137-138).[xvii]

Treatment of human rights complaints in the EAW system

12. The EAW Framework Decision, its interpretation and implementation by EU and national courts, has not consistently followed the Court's standards. The EAW Framework Decision does not explicitly permit refusal to execute an EAW on human rights grounds, such as because of a manifest risk of cruel and inhuman treatment. Moreover, early case law of the CJEU indicated an interpretation of the principle of mutual recognition that would not permit assessments of the human rights situation in another EU Member State. Yet, despite this, a number of EU Member States did create human rights grounds for refusal in line with the Court's *Bosphorus* standards. Moreover, in recent years there has been a growing acceptance at the EU level that mutual recognition does not mean that EU Member States must act blindly of human rights, culminating in a recent judgment of the CJEU that requires EU Member States to postpone execution of an EAW where there is evidence of a systemic risk. While national level practice since that judgment is not uniform, a consensus is clearly developing with critical outstanding questions relating to the types of information that can be used to make systemic risk assessments, and the extent to which executing Member States should blindly accept information or assurances provided by issuing Member States.

Insufficient recognition of the place fundamental rights in the EAW system

13. Article 1(2) of the EAW Framework Decision establishes a mandatory, unqualified obligation upon the executing court to surrender the requested person, apparently subject only to the grounds for refusal listed in Articles 3, 4 and 4a, none of which concern the risk of inhuman or degrading treatment upon surrender to the issuing Member State. The CJEU has several times stated that 'according to the provisions of Framework Decision 2002/584, the Member States may refuse to execute such a warrant only in the cases of mandatory non-execution provided for in Article 3 thereof and in the cases of optional non‑execution listed in Articles 4 and 4a' (see e.g. Case C-396/11 *Radu*, para. 36)[xviii].

14. Such a position accords with the CJEU's *Opinion 2/13* in which it stated that 'the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that (…) save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU' (para. 192). It further commented that if accession of the EU to the ECHR were to 'require a Member State to check that another Member State has observed fundamental rights, even though EU law imposes an obligation of mutual trust between those Member States', it would upset the underlying balance of EU law (para. 194).

15. Yet, from very early on in the implementation of the EAW, risks arising from post-extradition detention conditions were arguably the major issue raised by practitioners in EAW cases.[xix] That such concerns are well-founded has been increasingly recognised by the emergence of judgments

of the Court establishing systemic overcrowding in EU Member States' prisons, in particular through the mechanism of 'pilot' judgments where many complaints are before the Court: See, in order, *Orchowski v. Poland* (2009); *Torreggiani v. Italy* (2013); *Varga and Others v. Hungary* (2015); *Neshkov and Others v. Bulgaria* (2015); *Rezmiveş and Others v. Romania* (2017).[xx]

Gradual recognition of fundamental rights in EU mutual recognition instruments including the EAW

16. As set out in Fair Trials' submission before the national court in this case, it has been increasingly accepted that EU instruments grounded on mutual recognition must be subject to fundamental rights protection. In 2014, for example, Directive 2014/41/EU on the European Investigation Order (EIO) was enacted, expressly including a fundamental rights-based exception to that subsequent mutual recognition system. Similarly, in the comparable context of the EU's asylum transfer system, the CJEU recognized that risks of inhuman or degrading treatment could be raised against the physical transfer of individual persons between Member States on the basis of mutual trust presumptions.[xxi] And, in 2014, the European Parliament issued a resolution requesting the European Commission to submit legislative proposals to remedy and clarify some aspects of the EAW framework in order to prevent miscarriages of justice, long periods of pre-trial detention and other breaches of suspects' human rights.[xxii]

17. While the EAW Framework Decision has yet to be reformed to resolve the totality of the European Parliament's concerns, in April 2016, in the Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Caldararu*,[xxiii] the CJEU clarified that Member States' obligations under the EU Charter of Fundamental Rights imply certain protections where fundamental rights risks arising from prison conditions are raised against extradition. The judgment establishes a three-stage process: (1) the executing court must determine, in light of 'objective, reliable, specific and properly updated' information, whether, notwithstanding the presumptions applicable, a real risk of a breach of Article 4 of the Charter arises due to generalised or particular problems in the issuing state's prison conditions (para. 89); (2) the executing court must then make a specific assessment as to whether the individual will be exposed to that risk, for which it must request the issuing judicial authority for supplementary information (paras. 94-97); (3) if, in light of the information supplied, the executing court determines that there is a risk, it must postpone enforcement of the EAW (para. 98), while if the information supplied allays its concerns allows it to discount the existence of a real risk to the individual concerned, it must adopt its decision on the EAW (para. 102).[1]

[1] Fair Trials notes that in the Opinion of Advocate-General Bot in the case, it was highlighted that the EU had as yet failed to exercise its legislative powers under Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) to adopt legislation limiting the use of pre-trial detention (frequently identified by the Court as a key source of prison overcrowding). We would agree: by acting in this area, the EU will limit the need to refuse EAW's due to overcrowding.

18. Thus, while a mandatory ground for refusal on the basis of fundamental rights risks has not yet been established in the EAW Framework Decision, the CJEU's judgment does at least permit postponement of execution pending receipt of information from the issuing Member State regarding detention conditions.

National practice prior to, and since, *Aranyosi and Caldararu*

19. As set out in Fair Trials' submission before the national court in this case,[xxiv] prior to the *Aranyosi and Caldararu* judgment some national courts, relying upon the existing case-law of the Court on Article 3 and that of the CJEU on Article 4 of the Charter, recognised that EAWs could not be executed in the face of compelling evidence of risks of human rights violations, including inhuman and degrading treatment.[2] However, at the same time, other courts across the EU continued to rely on mutual trust alone in the implementation of the EAW Framework Decision, even in the face of compelling evidence of the risks of human rights violations.

20. Fair Trials' monitoring of state practice since the *Aranyosi and Caldararu* judgment, including through the Legal Experts Advisory Panel (the "LEAP") – a network of expert representatives from 157 civil society organizations, criminal defence law firms, and academic institutions from across all EU Member States – indicates that consistent state practice has yet to emerge, with national courts grappling with two questions in particular: (1) what types of evidence are sufficiently 'objective, reliable, specific and properly updated' to be used in order to make the initial assessment of systemic risk; and (2) to what extent do Member States need to "look behind" information or assurances subsequently provided by a Member State once a systemic risk has been identified?[xxv] Nonetheless, it is clear that instances of national courts refusing to execute EAWs, at least until an assurance is given by the issuing Member State, are on the rise with a number of decisions that the Court can reasonably take account of in these proceedings:

21. *United Kingdom* –

    a. Following the Court's pilot judgment *Torreggiani v. Italy*, the High Court ruled that the presumption of compliance with fundamental rights was rebutted and that the requested person could not be extradited to Italy, in spite of a letter from the Italian authorities which was deemed insufficient (*Badre v Court of Florence v. Italy* [2014] EWHC 614 (Admin))[xxvi].

    b. Following the Court's pilot judgment in *Varga and Others v. Hungary*, it was conceded by the Hungarian judicial authority that the presumption of compliance with fundamental

[2] Fair Trials contends that, in doing so, Member States' courts were assuming their own responsibility under the Convention for the purposes of the *Bosphorus* case-law, as if they were exercising discretion.

rights was rebutted, and the issue litigated before the High Court was whether a case-specific assurance given by the Hungarian authority affirming that the requested person would be held in conditions exceeding 3sqm was sufficient, which the High Court ruled that it was (*GS & Others v Central District Court of Pest & Others* [2016] EWHC 64 (Admin))[xxvii].[3]

c. Even prior to the pilot judgment in *Rezmives and Others v. Romania*, cases had arisen in the High Court in which the initial presumptions were regarded as rebutted due to the existence of 'ordinary' judgments of the Court finding Article 3 violations against Romania. Following *Rezmives*, other cases followed in the High Court. The initial presumption mandated by mutual recognition is regarded as overturned by the pilot judgment, and the issue litigated has related to the assurances supplied by the Romanian authorities and the extent to which they discount the risks so established. The current position turns upon the conditions in the 'semi-open' regime within the Romanian prison system, where the current assurances by the Romanian authorities guarantee only 2sqm per detainee. In light of the judgment of the Court in *Mursic v. Croatia* (whereby space may only fall below 3sqm for short periods), such an assurance has been deemed insufficient (*Grecu and Bagarea v Cornetu Court, Romania & Another* [2017] EWHC 1427 (Admin))[xxviii].[4] In addition, a series of decisions were taken in the Westminster Magistrates court refusing to execute EAWs from Romania after the court heard evidence from 11 people who had previously been extradited to Romania which indicated a failure to accord with the terms assurances given to the UK government regarding prison conditions.[xxix]

22. *Italy* –

a. The Court of Cassation, in a judgment by 26 October 2016 (Pen Sez. 2 Num. 45757 Anno 2016),[xxx] considered for the second time a case of a person requested for extradition by Romania. In its previous judgment, on the basis of *Aranyosi and Caldararu*, it had remitted the matter to the appeal court to seek further information from the Romanian authorities, and ordered the appeal court to consider this in light of earlier Article 3 case-law of the Court indicating a minimum of 3sqm was required. The information forthcoming had

[3] Anecdotally, Fair Trials understands from LEAP that the issue currently being litigated in the English courts is whether, in light of legislative and other reforms undertaken by Hungary in implementation of *Varga*, it is still necessary for Hungary to supply specific assurances or whether the courts may rely upon the general presumptions as before.

[4] Fair Trials understands from the LEAP that, in practice, individuals are routinely discharged by the executing court where they are due to be detained, either initially or potentially later in their sentence, in the semi-open regime. Where the requested person is to be detained in closed conditions (e.g. for dangerous offenders) or in maximum security conditions (sentences over 13 years), the courts are able to order extradition.

referred in general terms to the prison estate, including the closed, semi-open and open regimes. Extradition had again been ordered and the Court of Cassation was again seised of the matter. It noted at length the requirements of *Aranyosi and Caldararu* and found the information supplied deficient in so far as it was not specific to the individual requested person and in any case did not offer the guarantee of space exceeding 3sqm.

b. The Court of Cassation, in a judgment of 11 October 2017 (Pen. Sez. 6 Num 47891 Anno 2017),[xxxi] referring to its earlier case-law and the CJEU judgment in *Aranyosi and Caldararu*, reiterated that for surrender to states whose prison estates are – on the basis of objective, reliable, precise and updated information – affected by serious systemic or generalised deficiencies, it is necessary to assess the existence of an individual risk by means of further enquiry of the issuing state. It noted, *inter alia*, that although the position was uncertain, the information from the requesting Romanian authority indicated that the requested person was likely to be detained in the semi-open regime guaranteeing only 2sqm, and that, per *Mursic v. Croatia*, individual space could only fall below 3sqm per the parameters of that judgment, and such was not the case in the semi-open regime. The judgment under examination was therefore annulled and the matter remitted back to the lower court for further examination in line with the *Aranyosi and Caldararu* approach.

23. *Netherlands* –

a. In the Netherlands, a variety of decisions have been taken in the Amsterdam District Court that have grappled with the extent to which assurances received by issuing Member States sufficiently resolve fundamental rights concerns. For example, in September 2017 the Amsterdam District Court ruled that assurances given by the Portuguese authorities regarding conditions in the Lisbon prison were too vague, citing reports from the Portuguese Ombudsman that several shortcomings identified by the Committee for the Prevention of Torture in 2013 were still present.[xxxii] Execution of Portuguese Arrest Warrants was later permitted, however, after receiving a more detailed assurance from the Portuguese authorities.[xxxiii] Similar developments have occurred with regard to assurances from other countries, such as Belgium[xxxiv] and France.[xxxv]

24. *Germany* –

a. The Higher Regional Court of Celle, in a ruling of 2 March 2017 (1 AR (Ausl) 99/16), held that the compatibility of extradition under an EAW with Article 3 of the Convention had to be assessed in light of the minimum requirements in *Mursic v. Croatia*, according to which individual space could fall below 3sqm only briefly, occasionally and minimally. As a result, it found that extradition to face a prison sentence in Romania under the closed regime (where 3sqm was guaranteed by the assurances before the court) would be compatible, but

extradition to face detention in the semi-open regime (where only 2sqm was assured) fell short of that standard, rendering extradition unlawful.[xxxvi]

b. The Federal Constitutional Court (Order of 19 December 2017 - 2 BvR 424/17) very recently considered the position of the Higher Regional Court of Hamburg, one of the few German courts which had taken the view that the individual space of 2sqm in the semi-open regime had to be considered together with the allocation of out-of-cell time, and taken account of improvements in the Romanian prison system. The Federal Constitutional Court did not consider the substance of the complaint under the right to dignity, but found the ruling of the Hamburg court unlawful under the right to the lawful judge under Article 101(1) of the Basic Law, which, in line with Article 267 TFEU, makes the CJEU the arbiter of EU law issues. It noted that the CJEU had not yet ruled upon the issue and held that where doubts exist as to the interpretation and application of EU law arise in proceedings before the regular courts the relevant questions are to be referred to the CJEU.[xxxvii]

Issues that the Court could address in this case

25. In light of all of the above Fair Trials would submit that there are various issues, which the Court could address when giving judgment in the present case. In particular:

Rebuttable nature of mutual trust presumptions

26. This case provides a long-awaited opportunity for the Court to confirm, unequivocally, that mutual recognition presumptions must, per *Avotiņš v. Latvia* (2016), be capable of being called into question and should not be applied mechanically and automatically in this context, as *Aranyosi and Caldararu* itself makes clear.

References to the CJEU

27. Whilst Article 6 of the Convention does not, per the Court's case-law (*Maaouia v. France*) apply in extradition proceedings, it is submitted that the failure to make a reference for a preliminary ruling must be considered significant when assessing whether a Contracting State can be held responsible under Articles 3 and 13 Convention as a result of implementing EU law obligations raising human rights issues which urgently call for clarification (see *Avotiņš v. Latvia* (2016), §§ 109-111). The recent decision of the Federal Constitutional Court of Germany is particularly notable in this regard.

The sources of information to be relied on

28. The *Aranyosi and Caldararu* judgment provides little guidance to EU Member States on the types of information to be relied on in order to assess risk beyond the statement that information must be 'objective, reliable, specific and properly updated.' This case provides an opportunity to address this issue, for example, by making clear the weight to be accorded to judgments of the Court (pilot

judgments in particular), reports of the Committee for the Prevention of Torture, national human rights institutions and human rights NGOs, as well as expert evidence and other relevant sources. For example, we would argue that the surrendering court should be bound to take into account up-to-date information from the Court's execution of judgments department showing whether the systemic issues diagnosed in such judgments are continuing or not.

The role of minimum space

29. Fair Trials would submit that the decisions mentioned above (particularly those of the Italian, German and English courts) suggest a clear approach whereby the standard expressed in *Mursic v Croatia* is used as the yardstick for the assessment of risk under Article 3. If, having regard to judgments of the Court, and information supplied by the issuing state, it appears the requested person will be detained without access to such space, extradition should not be possible under Article 3. This trend has only arisen clearly since *Aranyosi and Caldararu* and the Court is invited to endorse it.

Obligations of Convention states after receiving assurances

30. Fair Trials recognises that the issue of reliability of assurances may not strictly arise in this case. However, as the above national practice shows, it appears to be a key part of the assessment needing to be performed under 'Stage 3' of the *Aranyosi and Caldararu* process. Fair Trials accepts that such assurances, being solemn undertakings issued as between EU Member States, have to be accorded due weight. However, we would submit that in some circumstances – in particular where Council of Europe authorities continue to express concerns as to the implementation of relevant judgments or where evidence of past breaches of assurances can be shown – the executing state must be willing to look behind such assurances as part of its duty to provide 'independent and rigorous scrutiny' of an Article 3 complaint under Article 13. It will, otherwise, simply return to blind faith and the 'automatic and mechanical' application of mutual recognition.[5]

[5] At present, the weight accorded to such assurances is such that only in the rare circumstance where extradited persons maintain contact with their lawyers in the executing state and document harm actually arising after extradition has it been possible to call into question the assurances given. That is an impossible, impermissible burden to place upon the defence community. Fair Trials' proposed approach would entail, for instance, the obligation to seek up to date statistical information (e.g. as to overcrowding levels) supporting the assurance given, reporting on compliance with past assurances, and the drawing of appropriate inferences where such information is not supplied in response. The reality is that if Member States are issuing assurances in good faith, with a genuine basis, they should have no concern as to such statistical information undermining them.

REFERENCES

[i] *Bosphorus v. Ireland* (2005), available at http://hudoc.echr.coe.int/eng?i=001-69564

[ii] *Michaud v. France (2016)*, available at http://hudoc.echr.coe.int/eng?i=001-115377

[iii] *Avotiņš v. Latvia* (2016), available at http://hudoc.echr.coe.int/eng?i=001-163114

[iv] *M.S.S. v. Belgium and Greece* (2011), available at http://hudoc.echr.coe.int/eng?i=001-103050

[v] CJEU *Opinion 2/13* (2014), available at http://curia.europa.eu/juris/liste.jsf?num=C-2/13

[vi] *Lopez Elorza v. Spain*, available at http://hudoc.echr.coe.int/eng?i=001-179422

[vii] *Tershiyev v. Azerbaijan* (2014), available at http://hudoc.echr.coe.int/eng?i=001-145788

[viii] *Tarakhel v. Switzerland* (2014), available at http://hudoc.echr.coe.int/eng?i=001-148070

[ix] *Chankayev v. Azerbaijan* (2013), available at http://hudoc.echr.coe.int/eng?i=001-128056

[x] *Ananyev v. Russia* (2012), available at http://hudoc.echr.coe.int/eng?i=001-108465

[xi] *Saadi v Italy (2008)*, available at http://hudoc.echr.coe.int/eng?i=001-85276

[xii] *Mamzhonov v. Russia* (2014), available at http://hudoc.echr.coe.int/eng?i=001-147333

[xiii] *M.S.S. v. Belgium and Greece* (2011), available at http://hudoc.echr.coe.int/eng?i=001-103050

[xiv] *Chankayev v. Azerbaijan* (2013), available at http://hudoc.echr.coe.int/eng?i=001-128056

[xv] *M.S.S. v. Belgium and Greece* (2011), available at http://hudoc.echr.coe.int/eng?i=001-103050

[xvi] *Ananyev v. Russia* (2012), available at http://hudoc.echr.coe.int/eng?i=001-108465

[xvii] *Muršić v. Croatia* (2016), available at http://hudoc.echr.coe.int/eng?i=001-167483

[xviii] Case C-396/11 *Radu*, available at http://curia.europa.eu/juris/liste.jsf?language=en&num=C-396/11

[xix] See Fair Trials, *The European Arrest Warrant – Cases of Injustice* (2011) available at https://www.fairtrials.org/documents/EAW_-_Cases_of_Injustice1.pdf; JUSTICE, *European Arrest Warrants – Ensuring an effective defence* (2012), p. 23, available at https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2015/01/JUSTICE-European-Arrest-Warrants.pdf

[xx] *Orchowski v. Poland* (2009) available at http://hudoc.echr.coe.int/eng?i=001-95314; *Torreggiani v. Italy* (2013), available at http://hudoc.echr.coe.int/eng?i=001-115860; *Varga and Others v. Hungary* (2015), available at *http://hudoc.echr.coe.int/eng?i=001-152784*; *Neshkov and Others v. Bulgaria* (2015) available at http://hudoc.echr.coe.int/eng?i=001-150771; *Rezmiveş and Others v. Romania* (2017) available at http://hudoc.echr.coe.int/eng?i=001-173105.

[xxi] Fair Trials' submission in the national case available at: https://www.fairtrials.org/wp-content/uploads/140731-EAW-RO-BE-Cassation-observations.pdf?platform=hootsuite

[xxii] 27 February 2014 Resolution of the European Parliament available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0174&language=EN

[xxiii] Joined Cases C-404/15 and C-659/15 PPU, *Aranyosi and Caldararu*, available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=175547&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=264665

[xxiv] Supra Note xxi, at pp-2-5.

[xxv] See e.g. Mary Westcott, *DELF Educational Event: "The CJEU and the Goldilocks Squeeze"*, Defence Extradition Lawyers Forum News Issue 9 (28 November 2017) available at http://delf.org.uk/wp-content/uploads/2017/11/DELF-Newsletter-9.pdf

[xxvi] *Badre v Court of Florence v. Italy* [2014] EWHC 614 (Admin), available at http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2014/614.html

[xxvii] *GS & Others v Central District Court of Pest & Others* [2016] EWHC 64 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2016/64.html

[xxviii] *Grecu and Bagarea v Cornetu Court, Romania & Another* [2017] EWHC 1427 (Admin), available at http://www.bailii.org/ew/cases/EWHC/Admin/2017/1427.html

[xxix]*Timis County Court (Romania) and Daniel Nicolae Rusu*, Westminster Magistrates' Court, 11 Aug ust 2016; *Mures (Romania) and the Bistrita-Nasaud Tribunal v Alexandru Zagrean*, 8 August 2016; *Judicial Authority of Romania v Stelica Ciutac*, 11 August 2016; *Timis Tribunal (Romania) and Vasil e-Laurenjiu Pascaru*, 18 August 2016*; Judecatoria Sectorolui 2 Bucresti (Romania) and Constantin Airinei*, 18 August 2016*; Judicial Authority of Romania v Cristina Sanda Indi*, 1 September 2016. Summaries available at https://www.fairtrials.org/wp-content/uploads/2016/10/LEAP-2016-Q3.pdf.

[xxx] Pen Sez. 2 Num. 45757 Anno 2016, available at http://www.parolaalladifesa.it/wp-content/uploads/2016/11/Estradizione-mae-Cass-pen-sez-II-26-ottobre-2016-45757.pdf

[xxxi] Pen. Sez. 6 Num 47891 Anno 2017, available at http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snpen&id=./20171017/snpen@s60@a2017@n47891@tS.clean.pdf

[xxxii] See Thom Dieben, *Portuguese Prison Conditions*, Defence Extradition Lawyers Forum News Issue 8 (4 October 2017) available at http://delf.org.uk/wp-content/uploads/2017/10/DELF-Newsletter-Issue-8.pdf

[xxxiii] See Thom Dieben, *Amsterdam Court rules extradition to Portugal may be resumed*, Defence Extradition Lawyers Forum News Issue 9, supra note xxv.

[xxxiv] See Thom Dieben, *Prison Conditions in Belgium*, Defence Extradition Lawyers Forum News Issue 7 (9 August 2017) available at http://delf.org.uk/wp-content/uploads/2017/08/DELF-Newsletter-issue-7.pdf

[xxxv] See Thom Diebens, *A short update from Holland: French prison conditions*, Defence Extradition Lawyers Forum News Issue 8, supra note xxxii

[xxxvi] A summary of the Higher Regional Court of Celle ruling of 2 March 2017 (1 AR (Ausl) 99/16) decision is available at https://www.fairtrials.org/poor-prison-conditions-in-romania-prompt-german-court-to-refuse-surrender/

[xxxvii] A summary of the Federal Constitutional Court Order of 19 December 2017 (2 BvR 424/17) is available at https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2018/bvg18-003.html; the full decision is available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/12/rs20171219_2bvr042417.html; see also Anna Oehmichen, *German Federal Constitutional Court: Extradition to Romania ordered by Hamburg Court violates German Constitution* (16 January 2018) available at https://www.linkedin.com/pulse/german-federal-constitutional-court-extradition-anna-oehmichen/?trackingId=vPZY62PbRfw4CI6Ryzv6CA%3D%3D