

**Neutral Citation No: [2024] NICty 4**

**Ref: 2024NICty4**

*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

**ICOS No: 19/111555**

**Delivered: 15/03/2024**

**IN THE COUNTY COURT FOR NORTHERN IRELAND  
AND IN THE MATTER OF THE EXTRADITION ACT 2003**

**Between:**

**ROMANIA**

**Requesting State**

**-and-**

**CATALIN-MARIAN NECHIFOR**

**Requested Person**

**Stephen Ritchie BL (instructed by the Crown Solicitors Office) for the Requesting State  
Sean Devine BL (instructed by O'Neil Solicitors) for the Requested Person**

**HHJ GILPIN**

***Introduction***

[1] The Requested Person, Catalin Nechifor, was born on 24 November 1990 and is now 33 years of age.

[2] On 26 February 2019 Romania ("the Requesting State") issued a European Arrest Warrant in respect of the Requested Person. The Warrant was certified in the United Kingdom by the National Crime Agency on 6 October 2019.

[3] The Warrant arises out of the conviction of Mr Nechifor in Romania for offences of dishonesty.

[4] It would appear that prior to 27 September 2017 Mr Nechifor had been in custody in Romania. He had been incarcerated from 8 February 2013 to 18 April 2013 and then from 9 May 2014 to 27 September 2017.

[5] By 27 September 2017 Mr Nechifor had spent some three years four months in custody.

[6] Mr Nechifor's release in September 2017 arose by reason of a "conditional release" in Penal Sentence No 1697/2017.

[7] Mr Nechifor's evidence to this court was that on his release in September 2017 he was not subject to licence conditions and was able to lawfully leave Romania. His evidence was that he came to Northern Ireland in October 2017 shortly after his release at the end of the previous month. It would appear he has remained in Northern Ireland since that time.

[8] However, on 9 July 2018, by which time Mr Nechifor had been in Northern Ireland for some months, he was sentenced, in his absence, by Brasov District Court in Romania in respect of two counts of theft. Sentences of one year on each of the two counts were imposed. These sentences were given reference numbers S-00501 and S-00502.

[9] On 19 November 2018 a number of sentencing issues concerning Mr Nechifor came before the Court of Appeal in Brasov. The Court of Appeal seemingly sought to address various sentences that by that stage had been imposed on Mr Nechifor by way of a global sentence. Thus, on 19 November 2018 the Court of Appeal did two things:

- The "conditional release" granted to Mr Nechifor in 2017 was cancelled; and
- The two, one year sentences imposed on 9 July 2018 together with sentences from 2012 (number 81), 2013 (number 89) and 2014 (number 88) were replaced by one global sentence of six years and four months.

[10] The effect of the Court of Appeal's order of 19 November 2018 was that Mr Nechifor was required to be returned to custody in Romania and thus on 26 February 2019 a European Arrest Warrant was issued.

[11] After the warrant was certified by the National Crime Agency Mr Nechifor was arrested on by the Police Service of Northern Ireland on 27 November 2019. He spent two days in custody following his arrest and since that date has remained on bail in Northern Ireland.

### *The evidence of the Requested Person*

[12] In resisting the Requesting State's application for extradition the Requested Person filed a signed statement dated 6 April 2022 which he then adopted as his evidence to the court when he gave sworn evidence.

[13] His statement recounts, inter alia, the periods in custody he spent in Romania prior to his release in 2017. He refers to the various prisons he was incarcerated in and the conditions he experienced in them. He said that on his release from custody

there were no restrictions placed on him and he was permitted to leave Romania if he so wished.

[14] The Requested Person tells of his arrival in Northern Ireland in October 2017 and the various forms of employment he has since undertaken. He mentions that he began a relationship with his partner in April 2018 who he notes is in employment as is her daughter. He says that he has helped to finance his partner as she has undertaken tertiary level education. He says that he has lived in the same rental property in Ballymena since 2018 and gets on well with his neighbours. In summary the Requested Person says that he has been attempting to “build a life” for himself in Northern Ireland.

[15] When cross-examined by Mr Ritchie the Requested Person said that he found out about the further convictions in Romania during a conversation with his mother after his arrival in Northern Ireland.

### *The parties’ submissions in respect of the contested extradition hearing*

[16] In resisting the application for extradition Mr Nechifor contends that his extradition would be incompatible with certain of his rights under the European Convention on Human Rights.

[17] Section 21 of the Extradition Act 2003 concerns human rights considerations for Requested Persons who, like Mr Nechifor, have been convicted of criminal offences. It provides:

“s21(1) If the judge is required to proceed under this section ...he must decide whether the person’s extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998.

(2) If the judge decides the question in subsection (1) in the negative he must order the person’s discharge.”

[18] In resisting extradition Mr Nechifor relies on two convention rights namely Article 3 and Article 8.

### *Article 3*

[19] Article 3 of the Convention provides that no person shall be subjected to torture or to inhumane or degrading treatment or punishment.

[20] As Romania is a signatory to the Convention there is a presumption that it will ensure compliance with the Requested Persons convention rights.

[21] However, that presumption of compliance can be displaced if the Requested Person can show there are substantial grounds for believing that if he is extradited there is a real risk his Article 3 rights will be violated.

[22] In this case the Requested Person submits that due to the prison conditions pertaining in Romania his Article 3 rights will be breached if extradition is ordered and thus this court must decline to order his extradition.

[23] If the court is to displace the presumption of compliance evidence to justify such a ruling must be placed before it.

[24] In the instant case the Requested Person has given evidence of the state of the conditions in the prisons in Romania he was incarcerated in before being released in 2017. This evidence was not contested, and the court accepts it. However, given the nature of the burden on the Requested Person his evidence alone will not suffice.

[25] Often, in cases such as the instant, one part of the evidence that is placed before the court comes as a result of the court undertaking something akin to an inquisitorial function and thus it may actively seek further information than it currently has before it.

[26] As a result of the decision of the Court of Justice of the European Union in *Aranyosi and Căldăraru* [C-404/15 & C-659/15] where a court dealing with an extradition application determines there is objective, reliable, specific and properly updated information demonstrating that there is systemic or generalised deficiencies in detention conditions prevailing in a Requesting State which gives rise to a real risk of inhuman or degrading treatment the court should request from the Requesting State supplementary information on the specific conditions the requested person is to be detained in to discount the existence of this risk. These requests take the form of Requests For Further Information (“RFFIs”).

[27] In this jurisdiction extensive guidance was given by the Divisional Court in its decision in *Latvia v Kilgasts* [2022] NIQB 60, on the making of such requests.

[28] In *Kilgasts*, the Divisional Court “strongly discouraged” an approach of seeking answers from the Requesting State to questions phrased in “vague and general terms.” Rather what is required is “all necessary information on the conditions in which it is envisaged that the individual concerned will be detained.”

[29] Mr Nechifor’s case first came before an Appropriate Judge in this jurisdiction prior to the decision in *Kilgasts* had been handed down.

[30] On 24 September 2021 the court approved an RFFI. This was despatched to the Requesting State. The Requesting State provided answers to the RFFI by means of written correspondence dated 3 December 2021 (“the 1<sup>st</sup> Article 3 RFFI response.”)

[31] In March 2023 the substantive application for extradition was listed for hearing. Immediately prior to this substantive hearing counsel for the Requested Person indicated that in their view in light of the 2022 decision in *Kilgasts*, the court should issue a further RFFI to ensure compliance with the *Kilgasts* decision.

[32] The Requested Person and the Requesting State filed written submissions including draft RFFIs and thereafter made oral submissions.

[33] Having taken into account all relevant matters I came to the view that the presumption Romania will comply with its Article 3 obligations did not apply. I therefore ordered that Romania must provide specific assurances to the court.

[34] Therefore, on 23 March 2023 another RFFI was sent to the Requesting State. The Requesting State provided a response dated 31 March 2023 (“the 2<sup>nd</sup> Article 3 RFFI response.”)

[35] In the 1<sup>st</sup> Article 3 RFFI response the Requesting State:

- Set out details of the initial detention facility that the Requested Person would be detained in on arrival in Romania, the quarantine period.
- Noted that at the end of a quarantine period a decision would be made as to which form of prison regime the Requested Person would serve out his sentence of imprisonment. The Requesting State set out some of the criteria that will be used to determine which form of prison regime would be selected.
- Noted in relation that the Requested Person will probably serve his sentence in a “closed regime” which may initially be the Aiud Penitentiary. The Requesting State set out some details of the nature of “the detention rooms” and the facilities and services provided to the prisoners.
- Noted if the Requested Person was transferred to a semi-open regime, it would most likely be the Codlea Penitentiary. Again the Requesting State set out some details of the premises and the facilities and services provided to the prisoners.
- Noted if the Requested Person was transferred to an open regime, it again would most likely be the Codlea Penitentiary. Again the Requesting State set out some details of the premises and the facilities and services provided to the prisoners.
- In relation to all of the types of prison facilities the Requesting State confirmed prisoners had the right to medical assistance, treatment and care and that they would be guaranteed a minimum personal space of 3sq m.

[36] In the 2<sup>nd</sup> Article 3 RFFI response the Requesting State dealt with a number of matters common to all prison facilities including:

- In relation to monitoring arrangements it is stated that the penitentiary units in Romania ensure the access of the representatives of the control bodies based on the treaties and international conventions to which Romania is a party in order to evaluate the conditions of detention.
- That in the event of the transfer of the detainee to another unit other than those for which guarantees were offered, the administration of the penitentiary where he is in custody will take measures to comply with the guarantees offered exactly as they were formulated.
- Referencing the legal right to medical assistance treatment and care provided free of charge.
- An assurance that persons deprived of their liberty are provided with clean articles of bedding specified as mattress, bed linen, blanket and pillow.
- Noting the right to diplomatic assistance of persons other than Romanians is guaranteed in conditions of confidentiality.
- Noting that the National Administration of Penitentiaries guarantees that the minimum individual space of 3 square metres will be provided “during the entire period of execution of the sentence including the bed and related furniture without including the space intended for the sanitary group” and “guarantees the execution of the custodial sentence for its entire period, including the period of quarantine and observation, and decent conditions that ensure respect for human dignity.”

[37] The Requesting State also provided information in relation to the various forms of prison regimes namely, the initial detention regime, the closed regime, the semi-open regime and the open regime.

### *Initial Detention*

[38] The initial detention facility is to be at Bucharest Rahova Penitentiary for the quarantine period of 21 days.

[39] On 28 March 2023 this facility had 136 persons imprisoned in quarantine with 162 places available.

[40] The conditions in Bucharest Rahova Penitentiary are said to be

- (a) a minimum personal space of 3 sqm;

- (b) a multidisciplinary programme in which the Requested Person can participate;
- (c) time spent outside the detention cell – daily walk of 2 hours and the option to participate in other activities;
- (d) measures arising out of the pandemic necessary to safeguard the welfare of prisoners;
- (e) accommodation conditions during quarantine and monitoring specifying lighting, ventilation bedding, sanitary equipment, sanitary conditions, hygiene and privacy, food galley, closets, water supply, clothing;
- (f) heating including room temperatures and the provision of hot water or bathing and
- (g) ensuring hygiene of the rooms, including provision of cleaning substances to those detained to enable them to keep their room clean.

### *Closed Regime*

[41] In relation to a closed regime it was indicated that this would most likely be the Aiud Penitentiary.

[42] It is also stated that in Aiud on 28 March 2023 there were 365 persons in the closed regime with 423 places available.

[43] Prisoners are entitled to 5 visits per month.

[44] Details in relation to the conditions in the closed regime were given namely:

- (a) furnishing of the accommodation rooms;
- (b) equipment in the sanitary units of the rooms;
- (c) access to cold and hot water;
- (d) lighting and ventilation;
- (e) minimum personal space of 3 sqm;
- (f) provision of privacy when using the sanitary units;
- (g) daily activities in courtyards outside the detention room and

(h) daily programmes for various specified sporting, educational and religious activities.

*Semi-open regime*

[45] In relation to a semi-open regime it was indicated that this would most likely be the Codlea Penitentiary.

[46] In Codlea on 28 March 2023 there were 276 in the semi-open regime with a number of 216 places intended for this category with a minimum individual space of 3 sqm.

[47] Prisoners are entitled to 5 visits per month.

[48] Details in relation to the conditions in the semi-open regime were given namely:

- (a) accommodation in common areas describing the provision of required bedding for each inmate, tables chairs and television;
- (b) lighting and heating;
- (c) the hygiene and sanitary facilities including details for providing privacy;
- (d) access to walking courtyards, clubs, sport court, church, classrooms;
- (e) the possibility of moving unaccompanied and to organise free time;
- (f) the doors of the rooms are open throughout the day;
- (g) walking courtyards are provided with places especially arranged for smoking are also available throughout the day;
- (h) the provision of telephones;
- (i) activities outside the penitentiary under supervision;
- (j) that five visits per month with a maximum duration of two hours are permitted;
- (k) educational programmes and activities;
- (l) development of work activities to ensure employment inside and outside the penitentiary;



(m) access to the library of the unit, sports activities and maintenance of his physical status and

(n) the possibility to spend free time throughout the day

### *Open Regime*

[49] In relation to a closed regime it was indicated this would also most likely be the Codlea Penitentiary.

[50] In Codlea on 28 March 2023 there were 91 prisoners in open regime with 99 places intended for this category with a minimum individual space of 3 sqm.

[51] Prisoners are entitled to 6 visits per month.

[52] Details in relation to the conditions in the open regime were given namely:

(a) The doors of the rooms are permanently open except to serve meals or perform some administrative activities;

(b) unlimited access to the walking yards provided with places arranged for smoking;

(c) the provision of telephones on the hallways and in walking yards with 10 calls available daily;

(d) Inmates can move unaccompanied within the place of imprisonment for various specified activities without monitoring;

(e) accommodation rooms are kept unlocked day and night save during the call and when serving meals;

(f) inmates in open regime organised their time alone;

(g) inmates can attend classes for education, medical assistance and participate in specified activities outside the imprisonment location without monitoring;

(h) Imprisonment rooms are described as equipped with an individual bed, furniture, heating equipment and hygienic and sanitary utilities ensuring access to drinkable water and hot water;

(i) Natural and artificial light and optimal ventilation is described;

(j) Sanitary units are described with partitions to ensure privacy with separate toilet cabins with natural ventilation;

- (k) there is access to “potable” water by means of connection to the public water network;
- (l) Hot water is distributed in all detention sections at least twice a week;
- (m) The distribution of food involves menus approved by the chief physician;
- (n) The heating of the detention rooms is described in detail;
- (o) Annually or depending on needs sanitization of the detention rooms is ensured;
- (p) disinfection and rat extermination actions are carried out quarterly with companies specialised in this regard;
- (q) In accordance with law for preventing and fighting the effects of the consumption of tobacco products smoking in all public places which includes cells for prisoners, other than in maximum security penitentiaries, is prohibited and
- (r) There is a guaranteed right to a daily walk for two hours.

[53] Therefore by a combination of the 1<sup>st</sup> Article 3 RFFI response and the 2<sup>nd</sup> Article 3 RFFI response the Requesting State sought to provide assurances to the court in relation to the conditions the Requested Person will face if extradited to Romania.

### *The Role of Assurances*

[54] In *Rezmives & others v Romania* [2017] ECHR 378, the European Court of Human Rights found that conditions in Romanian prisons routinely breached Article 3 and that the problems were systemic. The problems included overcrowding, poor furniture, poor hygiene, inadequate light, poor sanitation and the presence of vermin. In its judgment the court adopted a pilot judgment approach which has amongst its aims:

- to determine whether there has been a violation of the Convention in the particular case;
- to identify the dysfunction under national law that is at the root of the violation;
- to give clear indications to the Government as to how it can eliminate this dysfunction;

[55] Until measures have been put in place to remedy the deficiencies in the prison conditions specific assurances that a Requested Person's Article 3 rights would be protected will be required.

[56] In this case the Requesting State submits given the assurances provided by it there is no risk that the Requested Person's Article 3 rights will be violated in the instant case. The Requesting State submits that the assurances that have been given to the court in the 1<sup>st</sup> and 2<sup>nd</sup> Article 3 RFFI responses should provide sufficient assurance to the court.

[57] The Requested Person, however, submits that the responses from the Requesting State are "pro forma," fail to specify the prisons in which the Requested Person is to be detained in Romania and are not reliable.

[58] The Requested Person's submissions are to the effect that in the years that have passed since *Rezmives* there remain continued breaches of Article 3 in Romanian prisons and the court should not accept the assurances that have been given.

[59] Mr Devine drew the court's attention to The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report of April 2022 following visits made to prison facilities in Romania in 2021.

[60] The Executive Summary of this report notes:

"... the CPT is concerned to note that little or no action has been taken in respect of certain recommendations made in previous reports...."

[61] Mr Devine also referred the court to the work of the Ministers' Deputies of the Council of Europe Committee of Ministers and their work in supervising the execution of the judgments of the European Court of Human Rights in light of the court's decision in *Rezmives* which set out continued concerns about the Romanian prison system's compliance with Article 3.

[62] In *Muntean & Zaharia v Romania* [2022] NIQB 7 conjoined appeals concerning Article 3 and assurances came before the Divisional Court. In its judgment the court set out the tests to be applied when a court comes to consider assurances provided by a Requesting State. Drawing from the decision of the European Court of Human Rights in *Othman v United Kingdom* [2012] 55 EHRR, the court in *Muntean* noted the need for a twofold analysis which requires a consideration of:

- the quality of the assurances provided; and

- a consideration of the Requesting States practices

### *The Quality of Assurances*

[63] In this case the principal concern of the Requested Person is whether the assurances offered by the Requesting State are adequate given his submission that the failure by the Requesting State to specify with certainty the prisons that he will be detained in.

[64] Mr Devine is correct that the Requesting State's responses to the two Article 3 RFFI's as to the identity of the prisons are not definitive as to each and every prison the Requested Person will serve out his sentence. That said the Requesting States is definitive that the initial period in custody, the quarantine period, will be spent at the Rahova Penitentiary.

[65] However, after his time in Rahova Penitentiary has come to an end the Requesting State is not categorical as to which type of prison regime the Requested Person will be transferred to nor, while the Requesting State does indicate the most likely prison within each type of regime, this is not expressed to be a certainty.

[66] Thus, when it comes to a closed regime the Requesting State say that the Requested Person will "probably initially" and also "most likely" serve his sentence in the Aiud Penitentiary.

[67] In relation to both the semi-open and open regimes the Requesting State say this will "most probably" be the Codlea Penitentiary.

[68] Mr Devine's submission is that the Requesting State was asked in RFFI's to specify particular institutions that the Requested Person would serve his sentence in, but the replies provided lack the necessary specificity with the resulting uncertainty meaning this court should regard the assurances as inadequate and refuse to accept them.

[69] In this regard the Requested Person relies on the decision of the Divisional Court in *Romania v Carpaci* [2018] NIQB 105. In *Carpaci* the court had required an assurance that the Requested Person would serve his sentence at a particular prison. However, the assurance provided by the Requesting State was that a named prison was the "most likely" one at which the sentence would be served. In allowing the Requested Person's appeal the Divisional Court held that there was "no reference to where the Requested Person would be detained," there being "no assurance to the regime to which he would be admitted and there being no detail as to the conditions to which he would be extradited" came to the view the assurances were inadequate and allowed the Requested Person's appeal.

[70] However, in *Scerbatchi v Romania* [2018] EWHC 3612 (Admin) the Divisional Court followed the approach of other earlier decisions in *GS & others v Hungary* [2016] 1 WLR 33 and *Fuzesi v Hungary* [2018] EWHC 1885 and said at para 40:

“... there is no general requirement that each and every penal institution in which a Requested Person may be housed whilst in detention must be specified in any assurance.”

[71] Rather as the court in *Scerbatchi* went on to say what is required is:

“... that the assurance is of sufficient strength and scope to provide a secure and practical guarantee that the Requested Person will be protected against the risk of ill-treatment. That will, of course, depend upon an evaluation of the particular circumstances depicted by the evidence available to the court.”

[72] I am of the view that the law does not require the assurance to specify a particular prison for the assurance to be considered adequate by the court. I note that in the 2<sup>nd</sup> Article 3 RFFI response the Requesting State say “respect for human dignity” of the Requested Person will be provided for throughout his entire time in custody.

[73] I have carefully scrutinised the assurances given by the Requesting State and having done so am satisfied they are both sufficient and specific so as to provide a meaningful guarantee for the Requested Person who faces detention in a prison system with established Article 3 risks.

**In light of the Requesting States practices, can the assurances be relied on.**

[74] As outlined above the second of the tests in *Othman v United Kingdom* is whether the assurances given can be relied on in light of the practices in the Requesting State.

[75] In *GS & others v Hungary* [2016] 4 WLR 33 the court held:

“In all cases involving assurances the inquiry touches on their ‘practical application.’ The question involves consideration of what is promised, by whom it is promised and whether, having regard to all the circumstances on the ground in the state in question there is confidence that the promised will be honoured.”

[76] In *Muntean* the court noted that what must be kept in mind is that Romania is:

“... a sovereign European state which is a signatory of the ECHR and also a member of the EU. As such, it is entitled to the benefit of a strong, though rebuttable, presumption that it will abide by undertakings given to other Convention signatories.”

[77] In the instant case the Requesting State has provided detailed and comprehensive assurances about the specific conditions the Requested Person will be held in the various prison regimes and the most likely prisons in those regimes for the “entire period” of the Requested Person’s sentence.

[78] I am not satisfied that there is cogent evidence before me to rebut the presumption in favour of the reliability of the assurances given by the Requesting State.

### *No effective remedy*

[79] In furtherance of his argument that this court cannot be satisfied that the Requested Person’s Article 3 rights will be adequately protected the Requested Person submits that at present there is an absence of an effective domestic remedy in Romania if his Article 3 rights are violated.

[80] Mr Devine in his submissions notes that at the 1369<sup>th</sup> meeting of Minister’s Deputies in March 2020 they noted the repeal in Romania of what they term “the compensatory mechanism” which had the effect of depriving prisoners “of their right under Article 13 to an effective compensatory remedy for any arguable claim that their Convention rights have been violated.”

[81] The issue of the absence of an effective remedy has been comprehensively addressed in the binding decision of the Divisional Court in *Muntean* where the court said:

“[97] The final “appeal issue” to be addressed by this court relates to the availability of an effective domestic remedy for article 3 breaches in Romania.

[98] Under the pilot judgment in *Rezmives*, Romania had trialled an internal mechanism for compensating any prisoners within its jurisdiction who were held in breach of article 3 via a system which effectively reduced the time spent in custody. Unfortunately, this internal mechanism is now paused and it is to be hoped that it, or another mechanism of similar effect, will be reintroduced as soon as possible.

What effect does the current absence of an internal remedy within Romania have on the reliability of its assurances in extradition cases?

[99] It is clear that the presence of an internal system of redress within Romania would be one more indicator of the good faith and reliability of that state party to extradition proceedings. From everyone's point of view, it would be better to have such a system than not to have one.

Does the fact that no such system currently exist mean that Romania's assurances in extradition cases cannot be accepted?

[100] This is a matter of individual evaluation in relation to the total content and context of each individual case. In the present two cases there are detailed and specific guarantees of adequacy in relation to core matters such as personal space and access to core amenities such as light, ventilation, drinking water etc, and these guarantees are stated to be applicable to each of these two RPs regardless of where they are detained.

[101] The good faith of Romania is evidenced by its continued participation in the pilot judgment process and its continued engagement as a Convention partner. On a similar question raised in the GS case the court stated:

'The assurance is a solemn diplomatic undertaking by which the ... authorities consider themselves bound.'

[102] On the question of the effects of lack of domestic remedy in these types of cases the court said:

'the absence of such a remedy does not call into question the reliability of the assurance. It is binding as between the two countries concerned.'

[82] In the instant case I am satisfied there are sufficiently detailed and specific guarantees of adequacy in relation to core matters concerning human dignity that are to remain present throughout the entirety of the Requested Person's incarceration. While it would no doubt be preferable if Romania was to have a

domestic procedure for redress the present absence of one does not, given the nature of the assurances provided by the Requesting State, vitiate the assurances provided.

### *Article 3 – the rights of others*

[83] In what he described as a “novel” argument Mr Devine submits that this court should take into its consideration of the extradition request that if it is acceded to “this would increase pressures” on the prison population in Romania and “lead to other individuals being more tightly crammed.”

[84] This argument does not find favour with the court. The concerns of this court are with the Requested Person’s Convention rights not those of others.

[85] In any event, there is no evidence before the court that if the Requested Person was extradited the prison population in any of the prisons he may enter will increase to a point that other prisoners convention rights are infringed.

### *Article 8*

[86] The second Convention right that the Requested Person submits will be infringed if extradition occurs is his Article 8 right to respect for his private and family life. This provides:

#### **“Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. 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 or morals, or for the protection of the rights and freedoms of others.”

[87] There is a presumption that Member States of the Council of Europe, such as Romania, are able and willing to meet their obligations under the European Convention on Human Rights in the absence of evidence to the contrary. This presumption is enhanced where the Requesting State is in addition a Member State of the European Union [*Krolak v Poland* [2012] 1 WLR 490].

[88] In *HH v Italy* [2013] 1 AC 338 the court summarised the key principles arising from its earlier decision in *Norris v USA* [2010] 2 AC 487:



“(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.”

[89] In *Polish Judicial Authorities v Celinski & others* [2015] EWHC Lord Thomas LCJ said:

“[15] As we have indicated, it is important in our view that judges hearing cases where reliance is placed on Article 8 adopt an approach which clearly sets out an analysis of the facts as found and contains in succinct and clear terms adequate reasoning for the conclusion arrived at by balancing the necessary considerations.

[16] 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 paragraphs 30 to 44 of *Re B-S (Adoption: Application of s.47(5))* [2013] EWCA Civ 1146. 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.

[17] We would therefore hope that the judge would list the factors that favoured extradition and then the factors that militated against extradition. The judge would then, on the basis of the identification of the relevant factors, set out his/her conclusion as the result of balancing those factors with reasoning to support that conclusion. As appeals in these cases are, for the reasons we shall examine, common, such an approach is of the greatest assistance to an appellate court."

[90] In relation to the 'balance sheet' approach suggested in *Celinski* the factors favouring the ordering of extradition in the instant case are:

- The offending for which the Requested Person is sought is serious
- The sentence imposed by the Court of Appeal in *Bravsov* on 19 November 2018 is a lengthy sentence
- There is a public interest in the United Kingdom honouring its international obligations
- The Requested State must not be allowed to become a safe haven for those convicted of criminal offences elsewhere but have fled before serving their sentence.

[91] In relation to those matters the Requested Person submits tell against extradition Mr Devine suggests these are that the Requested Person:

- "has now served such a significant proportion of any sentence that the 'balance' is firmly tipped in favour of discharge."
- He is not a fugitive

- He has lived in Northern Ireland for some time having come here in October 2017
- Has a partner who lives with her daughter in Northern Ireland
- Came to Northern Ireland to build a new life
- If extradited to Romania would enter a harsh prison regime
- Has not been in trouble with the authorities since coming to Northern Ireland

*Time remaining to be served*

[92] In relation to his submissions on Article 8 Mr Devine put considerable emphasis on the length of sentence the Requested Person remains having to serve if extradited to Romania.

[93] An issue which has occupied much time in these extradition proceedings is the effect of the custodial sentence imposed by the Court of Appeal on 19 November 2018.

[94] The Requesting State submits that the decision of the Brasov Court of Appeal means that Mr Nechifor is required to return to custody and to serve all of the sentence of six years four months less the two days spent in custody in Northern Ireland.

[95] The Requested Person submits the decision of the Court of Appeal is to the effect the time Mr Nechifor spent in custody prior to being released in 2017 is to be deducted from the sentence imposed in 2018 leaving him only being required to serve the balance.

[96] In short, the Requesting State submits Mr Nechifor has still six years four months or 76 months of a custodial sentence ahead of him.

[97] However, the Requested Person submits given he has already served 43 months in custody and ordinarily only having to serve 2/3<sup>rds</sup> of his sentence thus reducing his sentence to 48 months he only has five months left to serve.

[98] In relation to this early release in Mr Devine's written submissions he notes that, "Home Office guidance suggests that Mr Nechifor would ordinarily be expected to serve out two thirds" of his sentence. In fact the text Mr Devine relies on goes no further than saying after a prisoner has served 2/3<sup>rds</sup> of a sentence of the length imposed on Mr Nechifor the prisoner can apply for "early conditional freedom." [emphasis mine]

[99] I keep in mind what the Divisional Court said in *Netherlands v Kat* [2023] NICA 54 paras [12]-[14] when the court reiterated that calculation of sentence is and remains a matter for the requesting state.

[100] In *France v Ogbegie* [2024] the Divisional Court said:

“[18] ... it is not for this court to speculate on the approach the French authorities might take in terms of remission and early release. That much has been made clear repeatedly by multiple courts in authorities to which we have been referred by both parties.

[101] I find there to be no merit in Mr Devine’s submissions that the process he makes mention of reduces, for the purpose of these extradition proceedings, the court’s calculation of the time this Requested Person remains to serve in custody. Firstly having served 43 months of a 76 month sentence the Requested Person has not served the 2/3<sup>rds</sup> of his sentence that is required to begin the process. Secondly even if 2/3<sup>rds</sup> of the sentence had been served there is no automatic entitlement to be released. Rather the text relied on by Mr Devine makes clear a prisoner simply has the right to apply for “early conditional freedom.”

[102] The European Arrest Warrant in this case was issued on 26 February 2019. In it at Part C when setting out the particulars of Mr Nechifor’s conviction it says:

“2. The duration of the imposed punishment or detention order -

**6 years and 4 months of imprisonment.**

Punishment left to be served:

Out of the punishment of **6 years and 4 months of imprisonment se deduce** the period already served, namely his arrest and provisional detention from 08.02.2013 until 18.04.2013 and from 09.05.2014 until 27.09.2017 **is deducted.**”

[103] This court sent a Request for Further Information to the Requesting State on 27 November 2019. The Request said:

“It is understood that the remaining sentence to be served is six years and four months imprisonment minus the period of time between 8 February 2013 until 18 April 2013 and 9 May 2014 until 27 September 2017.”

[104] The response to the Request for Further Information was dated 4 December 2019 it said:

“We also state that the periods served, as the sentenced person claimed ... were already deducted from this final punishment of 6 years and 4 months of imprisonment imposed to defendant Nechifor Catalin Marian but he has to serve the remaining punishment imposed.”

[105] After a contested extradition hearing on 20 June 2023 a further RFFI on this issue was sent dated 4 July 2023 in which it said:

“it would be of assistance to know whether the sentence handed down by the Court of Appeal in Brasov on 19 November 2018 of 6 years and 4 months means that Catalin Marian Nechifor still has 6 years and 4 months to serve or whether his previous time in custody is to be deducted and he need only serve the balance.”

[106] The response to this RFFI is dated 19 July 2023 and provides, that the Requested Person:

“... has been sentenced to a final cumulative imprisonment of 6 years and 4 months taking into account the period already served.... Consequently the convicted person will only serve the remaining portion of the sentence resulting from the deduction.”

[107] I am of the view that what the Court of Appeal did was to impose a global total sentence of six years four months on the Requested Person for the various offences but the time he had already spent in custody was to be deducted from this.

[108] The effect of this is that at present with the Requested Person having already spent some 43 months in prison he still has 33 months to serve, less the two days spent in custody in this jurisdiction following his arrest on foot of the European Arrest Warrant.

[109] In short, I find that the Requested Person still has a custodial sentence of two years nine months or 33 months to serve.

[110] In certain cases where the custodial sentence remaining to be served is a very short period of time it may be of significance in relation to whether the court should order extradition.

[111] In *France v Ogbegie* [2024] NI Div 2 the Divisional Court said:

“[12] It is common case that in extradition cases the fact that a requested person has served all or most of his/her sentence of imprisonment is a factor which may be of some weight. In certain cases it has been a decisive factor and has allowed a court to determine that extradition should be refused.”

[112] However, in the instant case I have found there is a substantial period of time namely two years nine months to be served. This comes nowhere near being a very short period of time that the court might have considered extradition no longer to be proportionate.

[113] Even if I am wrong in my determination as to the length of time the Requested Person still has to serve in prison and Mr Devine’s submission that he only has five months left to serve is correct this still does not come close enough to being a very short period of time that might have influenced the court.

[114] In relation to the other factors Mr Devine identifies as telling against extradition as set out above, I agree with him that they fall on that side of the balance sheet. However, even when considered cumulatively when balanced against the factors outlined that favour extradition, they do not come close to allowing this court to conclude that the Requested Person can successfully rely on his Article 8 right in resisting extradition.

### *Conclusion*

[115] For the reasons stated I order the Requested Person’s extradition to the Requesting State.

[116] The Requested Person has seven days from today’s date to lodge an appeal to the High Court against this ruling pursuant to section 26 of the Act.