[2017] IEHC 113

THE HIGH COURT

2006 No. 9 EXT

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

SAFET BUKOSHI OTHERWISE KNOWN AS ASTRIT PICARI (No. 2)

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered the 23rd day of January, 2017.

1. The High Court has been requested by the United Kingdom ("the U.K."), to give its consent to the extradition of the respondent to Albania from the United Kingdom. The consent of the High Court is necessary because the respondent is present in the U.K. (specifically Scotland) having been surrendered there on foot of a European arrest warrant ("EAW") issued by a court in Scotland. He is serving a sentence imposed on him in respect of the offence for which he was surrendered. The Court is satisfied that the person requested by the Albanian authorities is the same person in respect of whom the surrender has been ordered to the United Kingdom.

2. The respondent was surrendered to the U.K. in respect of a number of serious offences. After conviction, due to his mental health issues, the Scottish court made a compulsion order and a restriction order; this means that the respondent is subject to conditions of detention in hospital and to treatment without limit as to time. While serving that sentence in Scotland, a request for his extradition to Albania was received by the Scottish government. The request relates to a conviction in his absence on charges which, in the words of the Scottish government, "essentially amount to murder by means of an automatic firearm."

3. The solicitors who represented the respondent in the original EAW proceedings were notified of this request for onward extradition. They contacted the respondent, received instructions to act, and have represented him in this Court at all material times. The respondent filed a lengthy notice of objection but his points of objection to the giving of consent for onward extradition can be synopsised as follows:

> (a) His right to bodily integrity would be violated if extradited to Albania because of his particular mental health issues and the prison conditions in Albania;
>
> (b) That he had a trial *in absentia* and the retrial guarantees are insufficient;
>
> (c) There would be a violation of his right to fair trial in general; and
>
> (d) His respect for his private and family rights would be violated on surrender.

The nature of the Court's enquiry

4. At the beginning of the hearing of this application, counsel for the minister observed that this was the first case of its type, certainly the first contested case, under which the court was required to consider the provisions of s. 24(4) of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003") and that issues of interpretation arose. Section 24(4) of the said Act is the subsection which governs the giving of consent to the onward extradition to a third country from a State to which this country had surrendered a person on a European arrest warrant.

5. Section 24(4) of the Act of 2003, as amended, provides that:-

> "The High Court shall give its consent to a request under subsection (3) if it is satisfied that –
>
> (a) were the person concerned in the State, and
>
> (b) were a request for his or her extradition received in the State from the third country concerned,
>
> his or her extradition pursuant to such a request would not be prohibited under the Extradition Acts 1965 – 2001."

6. Section 24(4) of the Act of 2003 is the implementing section of Art. 28, para. 4 of the Council (EC) Framework Decision of 13th June, 2002 (2002/584/JHA) on the European arrest warrant and the surrender procedure between Member States ("the 2002 Framework Decision"). Article 28, para. 4 states:-

> "[…] a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law."

7. Counsel for the minister submitted that there are a number of possible interpretations of s. 24(4) of the Act of 2003. Counsel requested that the Court consider these interpretations and make a determination as to the appropriate basis upon which this Court should adjudicate on this request for consent to onward extradition.

8. The first possible interpretation is that the sole issue that concerns the court is whether extradition to the particular country, namely Albania, is prohibited by virtue of the Extradition Act, 1965, as amended ("the Act of 1965"). This narrow view limits the issue to whether Albania is a state with which this State has entered into any international agreement or convention for the purpose of surrender by each country to the other of persons wanted for prosecution or punishment, and that the Minister for Foreign Affairs has made an order applying Part Two of the Act of 1965 to that country.

9. Counsel for the minister has established to the Court's satisfaction that Albania is a country with which this State has entered into such an international convention by production to the Court of the latest statutory instrument which confirms that such an order was

made by the Minister for Foreign Affairs. In the schedule to S.I. No. 9 of 2009, Albania is listed as a country which is a party to *inter alia* the Paris Convention on extradition. The Court is therefore satisfied that the Minister for Foreign Affairs has made an order applying Part Two of the Act of 1965 to Albania.

10. The Court is satisfied, however, that these proofs are not sufficient to comply with the provisions of s. 24(4) of the Act of 2003. According to that subsection, the court must be satisfied, were the person concerned in the State and were a request for his or her extradition received, that his or her extradition would not be prohibited by the Extradition Acts 1965 – 2001 (i.e. the Act of 1965 as amended). If the person were in the State and if a request were received in relation to a person, the High Court would be obliged to consider all of the matters contained in the Act of 1965 as amended before extradition could be ordered. In the view of the Court, the focus in s. 24(4) of the Act of 2003 is on the person requested and not merely on the country seeking the extradition. The Court has no hesitation in holding that the High Court must consider the application from a wider perspective than merely confirming that the third country making the request is a party to an extradition agreement with this State and that Part Two applies to that country.

11. The second interpretation of s. 24(4) of the Act of 2003, as posited by counsel for the minister, is that the reference to prohibition relates solely to those prohibitions that are expressly set out in the Act of 1965 as amended. In that regard, counsel points to prohibitions, such as the requirement for correspondence and minimum gravity, the prohibition on surrender for political offences and certain military offences and with regard to Irish citizens in certain circumstances. Counsel referred to the Act of 1965 and to the lack therein of a similar provision to s. 37 of the Act of 2003; section 37 prohibits surrender in circumstances where the surrender would be incompatible with the State's obligations under the European Convention on Human Rights ("ECHR") and its protocols or would contravene a provision of the Constitution.

12. Counsel for the minister submitted that, while the State has duties under the Constitution and under the ECHR (see, for example, the case of *Soering v. United Kingdom* (App. No. 14038/88 [1989] ECHR 14, 7th July 1989)) to a person in the State whose extradition is sought, similar requirements may not necessarily apply in the situation of a person surrendered to another member state. Counsel submitted that the member state to which the person has been surrendered has certain duties to comply with the ECHR and the Charter on Fundamental Rights and Freedoms. In that sense, it was submitted that the person's rights will be protected by the courts of another jurisdiction and it would be unnecessary duplication for this court to consider those issues as well.

13. The Court considers it relevant to consider the terms of s. 29 of the Act of 1965, as amended. Under that section, the High Court must commit a person to prison to await extradition, if the court is satisfied that the conditions therein have been met. Section 24(4) of the Act of 2003 most closely resembles s. 29(1)(c) of the Act of 1965; that subsection requires the court to be satisfied that "extradition of the person claimed is not prohibited by this Part or the relevant extradition provisions […]". It has long been accepted by the Superior Courts in this jurisdiction that where extradition would violate fundamental constitutional norms, or would fail to respect the ECHR rights of the requested person, the extradition must be refused. An example of where the former was considered is *Finucane v. McMahon* [1990] 1 I.R. 165 and of where the ECHR was considered is *Attorney General v. Davis* [2016] IEHC 497. Therefore, although there is no express reference in Part Two of the Act of 1965, or in the extradition agreement to which this State is party to a prohibition on extradition if fundamental rights will be breached, it has long been accepted that extradition under those provisions is prohibited if extradition will result in a violation of fundamental rights.

14. If this respondent had not been surrendered to Scotland, but instead a request for his extradition had been made directly to Ireland, the High Court would be obliged to protect his ECHR and constitutional rights in considering whether his extradition is permitted. The reason the respondent is present in Scotland is because this Court has made an order directing his surrender thereto. In the ordinary course, no further prosecution or surrender or extradition can take place in respect of this respondent unless the High Court gives permission. The High Court, should it interpret s. 24(4) of the Act of 2003 in the manner contended for by the minister, would be reducing the constitutional protection provided to a person whose removal from the State has been ordered for a particular purpose and for that purpose only. While the Scottish courts and Scottish government may well be in a position to protect this respondent's ECHR rights, the Scottish courts and Scottish government cannot protect his rights under the Irish Constitution. It is not unknown that the rights set out in the Constitution may vary from those set out in the European Convention on Human Rights. Furthermore, it would also be removing from the Irish courts the power to protect the fundamental rights, which are guaranteed under the ECHR and by the Charter on Fundamental Rights and Freedoms, of a person who has been forcibly surrendered from this jurisdiction.

15. As this Court has pointed out, the provisions of s. 24(4) of the Act of 2003 and s. 29(1)(c) of the Act of 1965 are very similar. The courts of Ireland have operated the Act of 1965 on the basis that the Act and the extradition agreements prohibit extradition, where extradition would amount to a violation of fundamental rights under the Constitution or the European Convention on Human Rights. In the absence of a clear indication to the contrary in the Act of 2003, I am quite satisfied that the Oireachtas could not have intended that the similar provision in s. 24(4) of the Act of 2003 would be interpreted differently. In particular, there is nothing to indicate that the Oireachtas intended that a person already forcibly surrendered to another member state, would have lesser protection as regards fundamental rights than a person whose extradition was requested directly from this State. In those circumstances, this Court must proceed to consider whether his rights under the Constitution and the ECHR will be protected if he is to be extradited to Albania from the United Kingdom.

The specific prohibitions contained in the Extradition Act 1965, as amended

16. As stated above, the main objections put forward by the respondent to the granting of consent to his onward extradition to Albania concern the right to fair trial, freedom from inhuman and degrading treatment and the right to respect for his private and family rights. This Court is also required to consider whether other provisions of the Act of 1965 would prohibit his surrender. The court has carefully considered the documentation before it and is quite satisfied that the offence for which he has been convicted *in absentia* in Albania corresponds with the offence of murder in this State and is an offence which meets the requirements of minimum gravity.

17. The Court is also satisfied that sufficient details of the offence have been set out, as well as the relevant statutory provisions of Albanian law, in the request to the Scottish authorities which has been transmitted to this jurisdiction as part of the application for consent. Even though the respondent was convicted in Albania under a different name than that which he used in Ireland and Scotland, the Court is satisfied that his identity has been established.

18. Having considered the documentation, the Court is satisfied that none of the express prohibitions on extradition contained in the Act of 1965 require consent to his onward extradition to be refused.

The respondent's mental health, Albanian prison conditions and inhuman and degrading treatment

The factual situation as provided by Scotland

19. The relevant facts are that the respondent, who then called himself Safet Bukoshi, was surrendered to Scotland from Ireland in February, 2008 pursuant to a European arrest warrant. On 20th May, 2009, he was convicted of the offences in respect of which his surrender has been ordered, namely offences connected with setting fire to an aeroplane at Glasgow Airport. He was made subject to a (hospital) compulsion and restriction order due to concerns about his mental health without limit as to time. He was detained in the State Hospital, Carstairs in Scotland, was apparently transferred to another clinic in Scotland, but was later returned to the State Hospital.

20. Subsequent checks revealed that the respondent's correct identity is, in fact, Astrit Picari. He had been convicted in Albania on charges essentially amounting to murder by means of an automatic firearm and sentenced to seventeen years imprisonment in November, 1997. That trial was held *in absentia*. It appears that at the point of sentence, he fled Albania.

21. The information from the Scottish Government establishes that the respondent initially consented to his extradition to Albania before a court in Scotland. The matter then came before the Scottish government for the purpose of making the final decision on extradition. The Scottish government have indicated that, despite his consent, they are investigating how his human rights will be upheld should he be extradited. It was at that point in the Scottish procedure that the consent of Ireland to his onward extradition to Albania was sought.

22. The Scottish Government sent to the High Court the annual report on this respondent, dated 1st June, 2015, which was required by the relevant section of the Mental Health (Care and Treatment) (Scotland) Act, 2003 to be provided to the Scottish Ministers. That report also addressed a query from the Central Authority in this jurisdiction as to the capacity of the respondent to give informed consent to his extradition. The author of the report is Dr. Gordon Skilling, consultant forensic psychiatrist at the State Hospital, Carstairs, Scotland, where the respondent is detained.

23. Dr. Skilling reports that the respondent continues to be diagnosed with paranoid schizophrenia. He does not suffer from any other mental disorders. He continues to receive treatment with Olanzapine 10mg daily, which he has been on for many years. His mental state has remained stable and he has been in remission from symptoms of psychosis for some considerable period of time. The respondent accepts that he has benefitted from treatment with anti-psychotic medication and there has been no concern about his compliance. In Dr. Skilling's view, as a result of the respondent's mental disorder, it is necessary, in order to protect any other person from serious harm, for him to be detained, whether or not for medical treatment; there is concern about his ability to comply with medication if living in the community and to cope with other stressors.

24. Dr. Skilling is of the opinion that, without appropriate treatment including medication, the respondent's future mental health would be at significant risk. He is also of the view that, although the respondent is generally well settled and compliant with his care plan, he continues to require assessment and treatment in a secure setting and he would be unlikely to comply with that on a voluntary basis. The secure setting requires the condition of special security that can only be provided in the State Hospital.

25. Dr. Skilling makes it clear in his report that the relevant authorities have obtained very little information from the Albanian authorities about the nature of any psychiatric follow up that would be available to the respondent were he to be extradited. It appears that this was despite Dr. Skilling's reasonable effort to contact various Albanian authorities. In particular, he sent an e-mail to Durres prison but his subsequent e-mail to the prison went unanswered.

26. Dr. Skilling was also asked about the ability of the respondent to give informed consent to his extradition and, in his view, the respondent was quite capable of giving the appropriate consent. It is noted that the respondent has instructed his lawyers in this jurisdiction to oppose this application for consent to onward extradition and also that he intends to challenge any extradition that may occur in Scotland. No issue has been raised by the lawyers acting on behalf of the respondent as to his capacity to deal with the Scottish proceedings or the present proceedings. The Court is satisfied that the respondent's capacity to give instructions is not in doubt.

The respondent's affidavit

27. The respondent swore an affidavit grounding his points of objection. He accepts that he has a history of mental illness and accepts that when not on medication, he committed offences in Ireland when resident there in 2005. In May, 2007, he was convicted in the Dublin Circuit Criminal Court in relation to three counts of arson and one count of attempted arson all related to the same location and date and upon conviction he received a sentence of five years. He says he was surrendered to Scotland on completion of that sentence by order of the Irish High Court.

28. The respondent says that he is fully aware of the fact that he suffers from paranoid schizophrenia and that he needs medication to stay mentally well. He says that he will keep taking medication into the future as advised by his doctors. He expresses his concerns about being exposed to conditions in Albanian prison where he says he has been advised by his family members that inmates have their heads shaved and no ready access to clean clothes and showering / washing facilities. He says and believes that access to medicine is also very limited and has real concerns that his access to medication will be limited.

The respondent's evidence with respect to Albanian conditions

29. The principal evidence on behalf of the respondent was contained in a number of affidavits of Professor Brad K. Blitz who is a Professor of International Politics at Middlesex University in London. He specialises in, and has conducted several studies of, judicial reform in post-Communist states. He has been a frequent visitor to Albania since 2001 and in 2006 he acted as a consultant to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") with respect to penal conditions in Albania.

30. Professor Blitz compiled an initial report dealing with the position in Albania regarding:

(a) The provision of facilities for mentally ill prisoners;

(b) Retrial;

(c) Data on reversal of verdicts;

(d) Legal representation and representation for those convicted in their absence; and,

(e) Levels of corruption in Albania as they relate to the matter.

The evidence of Professor Blitz regarding prison conditions

31. Professor Blitz confirmed that Albania is a signatory to several international and domestic instruments which guarantee protection of human rights and in particular protect against torture and ill-treatment as stipulated under Article 3 of the European Convention on Human Rights. Albania operates under a Constitution which guarantees basic human rights and specifically prohibits torture. The prison system operates within a legislative framework; the most important instruments being the Penal Code and Penal Procedural Code, the Penal Executive Code or the execution of penal decisions and the law on the rights and treatment of prisoners and the law on penitentiary police who are prison security staff. Mental health is covered by the 1996 Mental Health Act, but Professor Blitz says the legislation has been subject to much criticism regarding the practice of involuntary admissions, overcrowding and the shortage of trained professionals.

32. In addition to the ECHR, Albania has also signed and ratified a number of other human rights conventions and protocols relevant to the respondent's case: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural rights, and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

33. Professor Blitz also indicates that over the past ten years Albania has been invited into a closer partnership with the European Union (E.U.), becoming a candidate country in 2012. During the course of Albania's discussions with the European Council, the state has been urged to adopt further European norms regarding human rights, the development of effective and good governance and the eradication of corruption. As part of the revised European partnership for Albania of December, 2005, short and medium term priorities which Albania should address were identified. This specified a number of action points that related to penal sector reform, including:

> (a) Ensuring that the relevant international conventions are observed in establishing and running new penitentiary facilities;
>
> (b) Ensuring compliance of the Albanian Criminal Code with U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
>
> (c) Implementation of the 2004 master plan to improve conditions for detainees and prisoners on remand; and
>
> (d) Ensuring that the code of ethics for the prisons system is rigorously observed.

34. Professor Blitz gave an overview of the prison system. From reputable data sources, it appears that the historical problem of overcrowding was now in decline with the opening of a new prison in October, 2012. International monitoring organisations note that conditions in prisons vary widely, with older facilities falling short of international standards. United States of America ("U.S.") State Department Human Rights reports, state that older facilities had unhygienic conditions and often lacked many basic amenities, including access to potable water, sanitation, ventilation, lighting and health care. The European Commission's Progress reports have highlighted some positive developments with respect to Albania's prison system, but they still call attention to cases of ill-treatment and partially implemented recommendations.

35. As a result of reports from the Office of the Ombudsman and non-governmental organisations concerning inadequate access to medical examinations, including wholly inadequate access to mental health care, in April 2014, the Albanian Parliament adopted a law that sets out the rights of detainees and standards for their treatment, including appropriate medical treatment in prisons.

36. Professor Blitz says that, in general, provision of care for the mentally ill is wholly underdeveloped in Albania. He says that in 2007, Albania maintained just 24 beds for the treatment of mental illness per 100,000 population. In his initial report, he referred extensively to the 2006 report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

37. In the conclusions to his initial report, Professor Blitz had concerns about the physical facilities of older prisons, that psychiatric and other mental health provisions are not provided in all prisons and that there are questions as to how the respondent would be able to receive the quality of care of a European standard. In particular, he said "one would seek assurances that if the defendant were returned, he would be able to avail himself of the necessary treatment in a designated prison." His final concern was that it was unlikely that wherever the defendant was housed, that he would be able to receive sufficient prescription medication, especially in the required dosage, since all reports suggest that individuals and their families must subsidise their own treatment.

38. After Professor Blitz had sworn his initial affidavit on 13th January, 2016, the Council of Europe issued a report to Albania authored by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the 2016 CPT report"). This dealt with visits to the Albanian penal system between 4th and 14th February, 2014. Professor Blitz swore a supplemental affidavit on 1st April, 2016, referring to particular aspects of that report.

39. The 2016 CPT report acknowledged cooperation from the Albanian authorities throughout, but noted that the principle of cooperation required that the CPT's recommendations be effectively implemented in practice. The CPT said it was very concerned by the lack of progress in a number of areas, such as the regime of activities provided to prisoners, prison health care services (in particular, the supply of medication to prisoners), the situation of forensic psychiatric patients (namely, the persistent failure to accommodate them in an adequate psychiatric establishment) and the implementation of legal safeguards surrounding involuntary hospitalisation of a civil nature. Professor Blitz highlighted a number of establishments that were visited by the CPT, but none of these was the prison Durres.

40. Professor Blitz had a particular concern about those who had been declared not criminally responsible, but subject to a judicial compulsory treatment order. At the time of the visit of the CPT, the great majority of such patients continued to be held in prison establishments in breach of national legislation. Some two thirds of them were being held at Kruja special facility in conditions which, in the CPT's view, "*were likely to amount to therapeutic abandonment. In fact, this establishment did not have a single psychiatrist for over a year, the supply of psychotropic medication was seriously affected by prolonged shortages and no rehabilitative activities worthy of the name were on offer*." The CPT called on the Albanian authorities to take urgent steps to remedy these shortcomings and speed up the creation of a specialised forensic psychiatry facility.

41. Professor Blitz referred to the specific complaints of the CPT regarding particular facilities that were visited. He also referred to the shortage of medical drugs, etc. at specific facilities. In its response to the 2016 CPT Report regarding the facilities at Korca in the 2016 CPT report, the Albanian government stated that it was committed to strengthening inter-agency cooperation to ensure modern standards in the treatment of prisoners in the penitentiary system. In that context, a cooperation agreement was signed in July (presumably 2014) between the Ministry of Justice and the Ministry of Health on healthcare in the penitentiary system. The response of the Albanian Government to the CPT report went on to state that "the implementation of this agreement has solved the problem of supplying medication, medical consultations in all regional hospitals, as well as enabling medical and psychiatric consultations,

laboratory examinations, endoscopy, imaging and any other necessary examination, in District Hospitals, Hospital University Centres, according to the legislation". Guidelines drafted pursuant to that agreement, on the cooperation of prisons with the health structures and institution at the local level, had improved the psychiatric service for patients with mental health disorders especially.

42. In his supplemental affidavit, Professor Blitz repeated the above response of the Albanian Government but he did not address the specific issues raised in that response. In answer to the Albanian response to the CPT report, he says "that it is my view that the provision of care for a person in the Respondent's position with his level of psychiatric illness remains wholly underdeveloped and of low quality in Albania". In his view, there is "substantial risk that he will not receive the required treatment if returned to Albania". He said that the construction of a forensic psychiatric hospital in Albania is still some time hence and the level of psychiatric care provided in those few prisons that do so is sporadic. He said that in other such prisons, regular consultations with psychiatrists and other experts and continuity of medical care is not readily available. Professor Blitz is quite correct in identifying that the response of the Albanian authorities indicated that the intended provision of a forensic psychiatric facility was at a very early stage.

43. A large number of reports from various bodies including non-governmental organisations was also placed before the court. These provided general background information in relation to Albania, its prisons and its health regimes. Many of these reports were not opened to the Court, nor were they referred to in written or oral submissions. Some of these were of some antiquity. The Court will only refer to the contents of those reports where relevant.

Information provided by the Albanian authorities with regard to this respondent
44. Subsequent to that supplemental affidavit of Professor Blitz, further information was received from the Albanian Ministry of Justice via the Scottish authorities. The Court accepts that it was entitled to receive this information.

45. The Albanian Ministry of Justice, relied upon a letter from the Director General of Prisons dated 27th May, 2016. This letter states that "citizens with mental health problems at the Albanian Penitentiary System are treated at [sic] the same standards of public health institutions, are diagnosed by psychiatrists of the Penitentiary System and of community health institutions, and are treated in accordance with the recommendation of psychiatrists. The hospitalization of these persons is realized at the Special Health Penitentiary Institution (Prison Hospital) until the improvement of their health situation".

46. It was clarified that the respondent "will be accommodated at the Institute for Enforcement of Criminal Judgments (IECJ) of Durres because this institution has a specialized psychiatrist". The letter went on to say that in relation to access to medical personnel that, not only at the IECJ of Durres, but also at all penitentiary institutions, the health service is available on a 24 hour basis. It was stated that the respondent will be under the continuous surveillance of the medical staff of this institution; that medical treatment will take place in accordance with the recommendations of psychiatrists and that he will be provided therapy with Olanzapine. There is a structure of psycho-social workers (psychologists) in the penitentiary system, where all convicts/pre-trial detainees are provided such a service. Finally, it was stated that at the IECJ of Durres, the respondent will be provided with continuous psychological and counselling therapy by the psycho-social staff and will be treated by "ITP (individual treatment program) for persons with mental health problems".

Further Reply of Professor Blitz
47. Professor Blitz replied by way of a further report to the above response by the Albanian government. He said that, as he had previously outlined, the provisions of psychiatric care in the penal system was wholly underdeveloped and that it was most unrealistic to suggest that 18 months on from the 2016 CPT report, there was comprehensive reform.

48. Professor Blitz had identified in his earlier report that Durres was a standard security prison with a section for minors and a total capacity of 250. He did not add any specific reference to Durres in his further report, but stated with respect to the assurances given about place and type of care that "[w]hile there has been significant improvement in the prison infrastructure, the above assurance have not been subject to external scrutiny." He referred to the absence of reports from other monitoring bodies.

49. Professor Blitz questioned whether the response of the Albanian authorities meant that facilities were prepared for those persons with chronic conditions. He also said that there were concerns regarding continuity of care should the named psychiatrist leave, and the availability of medication, because families of inmates are often required to purchase medication.

50. In Professor Blitz's view, the assurances provided were not sufficient to dissuade the concerns raised on a close reading of the 2016 CPT report and review of available secondary sources. He also said that, given the history of sub-standard conditions for prisoners and neglect of mental health provisions, he remained unconvinced by the statements provided and "believe[d] the defendant needs more specific guarantees for long term, sustainable psychiatric care and continuous provision of medication."

Other Evidence
51. Counsel for the respondent also relied upon the 2013 Report on Conditions in Albanian Prisons and Recommendations for Reform prepared by the Rule of Law and Human Rights Department of the Organization for Security and Cooperation in Europe ("OSCE"). This report referred to the issue of those persons who do not bear criminal responsibility for their crimes due to mental health problems. These are kept in prison hospitals or in a particular prison, namely Zaharia in Kruja. In that prison, most of the medication is provided by the prison but supplemented by families. There are medical personnel including psychologists available. Recommendations were made in respect of those persons who it said were "not prisoners, but patients."

The law regarding mental health, prisons and inhuman and degrading treatment
52. Subject to the issue, dealt with above, as to whether the Court had jurisdiction under s. 24(4) of the Act of 2003 to engage with issues of constitutional and ECHR rights, there was agreement that the High Court may not order the extradition of a person to a country where his rights to bodily and mental integrity, human dignity and right not to be subjected to inhuman and degrading treatment, would be violated. These are protected by Article 40.3 of the Constitution, Article 3 of the ECHR and indeed, where issues of European law are involved, by Article 19 of the European Union Charter on Fundamental Rights.

53. The decision in *Minister for Justice v. Rettinger* [2010] 3 I.R. 783 set out the principles under which the court must operate when assessing if there has been a breach of these particular rights. Although that case concerned surrender to an E.U. member state, it has been accepted in a number of subsequent cases that similar principles apply when considering extradition to a non-member state.

54. In *Rettinger*, the applicable test was set out by Denham C.J., as follows:

> "(i) a court should consider all the material before it, and if necessary material obtained of its own motion;
>
> (ii) a court should examine whether there is a real risk, in a rigorous examination;

(iii) the burden rests upon a respondent, such as the respondent in this case, to adduce evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention;.

(iv) it is open to a requesting state to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from a respondent as to conditions in the prisons of a requesting state with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the respondent were returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention. On the other hand, the requesting state may present evidence which would, or would not, dispel the view of the court.

(v) the court should examine the foreseeable consequences of sending a person to the requesting state;

(vi) the court may attach importance to reports of independent international human rights organisations, such as Amnesty International, and to governmental sources, such as the State Department of the United States of America;

(vii) the mere possibility of ill-treatment is not sufficient to establish a respondent's case;

(viii) the relevant time to consider the conditions in the requesting state is at the time of the hearing in the High Court. Although, of course, on an appeal to this court an application could be made, under the rules of court, seeking to admit additional evidence, if necessary;"

55. Based upon the judgment of Fennelly J. in the same case, it appears that the phrase "substantial grounds" must be read as meaning "reasonable grounds". As this Court has held in *Attorney General v. Damache* [2015] IEHC 339, the test in *Rettinger* applies to the prohibition on inhuman and degrading treatment under the Constitution or under the European Convention on Human Rights.

56. As the High Court (Edwards J.) held in *Attorney General v. O'Gara* [2012] IEHC 179, there is a presumption arising in extradition cases that the requesting country will act in good faith and that it will respect the fundamental rights of the requested person. This is a weaker presumption, and more easily rebutted, than the presumption to be found in respect of the presumed compliance with the provisions of the 2002 Framework Decision in respect of European arrest warrants by other member states of the European Union.

57. This Court, in the decision of *Attorney General v, Marques* [2015] IEHC 798, cited with approval the decision of the High Court in England and Wales in *R (McKinnon) v. Secretary of State for Home Affairs* [2009] EWHC 2021 where Lord Justice Stanley Burnton stated at para. 67 thereof:

> *"It is well recognised that Article 3 applies to conduct of the most serious and severe kind. It is particularly difficult for a person to establish a breach of his Article 3 rights where the conduct that is envisaged is, as in the present case, not the deliberate infliction of harm by agents of a foreign state but neglect or a lack of resources on the part of that state."*

58. In the case of *Attorney General v. N.S.S.* [2015] IEHC 349, the High Court (Edwards J.) accepted that important assurances had been given in respect of the custodial conditions in which that respondent would be kept should he be extradited to Russia. On that basis, the High Court held that its concerns were allayed in light of those assurances and there were no substantial grounds for believing that a real risk exists that the respondent if extradited would be detained in conditions which would breach the prohibition on inhuman and degrading treatment.

59. There is also no dispute that the particular conditions in which those suffering from mental ill health are treated may amount to inhuman and degrading treatment. In *G. v. France* (App. No. 27244/09, 23rd February, 2012), the European Court of Human Rights ("ECtHR") again reiterated that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The ECtHR went on to say at para. 38:

> *"The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in the case, such as the durations of the treatment, its physical or mental effects and, in some instances, the sex, age and state of health of the victim[…]. Although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3[…]. The Court also refers to the general principles concerning the States' responsibility in respect of health care dispensed to people in detention, as set out in the Slawomir Musial v. Poland judgment, for example (no. 28300/06, 85-86, 20 January 2009). In that judgment it found, in respect of a detainee suffering from serious, chronic mental disorders, including schizophrenia, that while maintaining the detention measure was not, in itself, incompatible with the applicant's state of health, detaining him in establishments not suitable for incarceration of the mentally-ill, raised a serious issue under the Convention. It also noted that the detained had not been given specialised treatment, particularly constant psychiatric supervision, and the cumulative effects of the inadequate medical care and inappropriate conditions in which the applicant was held clearly had a detrimental effect on his health and well-being and amounted to inhuman and degrading treatment."*

60. Both parties referred to the case of *Dybeku v. Albania* (App. No. 41153/06, 18th December 2007) albeit with a different emphasis, in which the ECtHR held that treating a mentally ill prisoner in the same manner as other prisoners was not a strong justifying argument on behalf of the respondent state. The nature of a prisoner's psychological condition may make him or her more vulnerable and exacerbate his or her feelings of distress, anguish and fear. In the *Dybeku* case, it was also held that a lack of resources cannot in principle justify detention conditions which are so poor as to reach the threshold conditions for Article 3 to apply. The *Dybeku* case related to events which occurred in or about the years 2002 to about 2007.

61. In *Aswat v. United Kingdom* (App. No. 17299/12, 16th April 2013), the extradition to the United States of a mentally ill man who was at risk of being detained in the ADX Prison (Supermax) in Florence, Colorado was prohibited. In particular, the ECtHR held that in light of the current medical evidence, there was a real risk that the applicant's extradition to a different country and to a different and potentially more hostile prison environment would result in a significant deterioration in his mental and physical health and that such a deterioration would be capable of reaching the Article 3 threshold.

The Court's analysis and determination on the prison conditions issue

62. In assessing whether a particular individual is at real risk of being subjected to inhuman and degrading treatment, the court's task

is not simply to assess whether human rights violations take place in the requesting country. The issue is to decide if there are substantial or reasonable grounds for believing that the particular respondent would be at real risk of a violation of his or her human rights. Nonetheless, the extent to which violations are systemic, their frequency and the particular vulnerability of the individual, are all factors which must be assessed in identifying whether there is a real risk of such abuse in the particular case.

63. In the present case, the evidence establishes that Albania has not had a good record in terms of its prisons conditions. In an annex to his report, Professor Blitz has included a short summary of Albanian political history since the Second World War in order to explain the present political and legal situation. Of note is that after political unrest in the 1990s, a large number of prisons were destroyed and this led to subsequent overcrowding. By 2006, however, the country began construction of a large number of prisons, in particular pre-trial detention centres. A new probation system was also put in place. On the evidence of Professor Blitz, it seems that historical issues of overcrowding have been abated.

64. Professor Blitz complained of poor physical facilities in certain custodial facilities. Based upon the information provided by Albania, we know that this respondent will be housed in Durres. This was a prison which was criticised by the CPT in its report in 2006. That report was relied upon by the ECtHR in *Dybeku*. Since then, it is clear that there has been much construction and refurbishment of prisons in Albania. In Professor Blitz's own report, he reported that the Minister of Justice prioritised rebuilding in the largest cities, naming Durres first in the order of priority. He referred to a pre-trial detention facility being started there. However, it is significant that Professor Blitz did not provide any specific criticism of Durres in his final response. In all the circumstances, the respondent has not produced any cogent evidence that there is any real risk that, by reason of the physical facilities in the custodial institutions in Albania, he will be subject to inhuman and degrading treatment.

65. Professor Blitz raised specific concerns about the nature of the psychiatric treatment that the respondent may receive. In particular, he queried whether it would be to "a European standard". The Court observes that in so far as this conveys an absolute standard for extradition to be permitted, it is not the standard that the Court has to consider; the issue is whether there is a real risk that the treatment (or lack thereof) would make the detention inhuman and degrading. As mentioned earlier at para. 37 of this judgment, Professor Blitz noted in his first report that "one would seek assurances that if the defendant were returned, he would be able to avail himself of the necessary treatment in a designated prison." He also raised the specific issue about access to medication.

66. In relation to both those matters, the Albanian government has given specific assurances that the respondent will be given the appropriate medical treatment including medication. The response to that by Professor Blitz has been to query the giving of those assurances. In particular, Professor Blitz said that while there has been significant improvement in the prison infrastructure, the prisons have not been subject to external scrutiny.

67. This Court is bound to apply the presumption that a country seeking extradition will act in good faith and respect fundamental rights. That presumption is weaker than in the case of surrender involving an E.U. member state and the EAW procedure. Nonetheless, it is not insignificant that Albania is a candidate country for membership of the E.U., that it is a party to the ECHR, that it is a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, that it is a party to the U.N. Convention Against Torture Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and that it is a party to the Optional Protocol to the Convention Against Torture. The specific assurances that have been given with respect to his treatment must be viewed in that light. Furthermore, there is no evidence that Albania has a track record of not abiding by specific assurances in extradition cases.

68. The Court is satisfied that Professor Blitz's concerns over whether matters can have improved within 18 months since the visit of the CPT in February 2014 (in fact this is a period of over 2 years and 3 months up to the date of the assurances) do not amount to cogent evidence that the respondent's right to freedom from inhuman and degrading treatment will be violated. Moreover, Professor Blitz does not consider that specific information was given in the response of the Albanian authorities to the 2016 CPT report in relation to a new agreement with relevant stakeholders regarding health care in prisons. That is a matter which appears to address structural problems in the provision of health care in the prisons.

69. More importantly, with regard to this specific respondent, it has been stated by the Albanian authorities that he will be accommodated at a named institution because it has a specialised psychiatrist. It is also been stated that at this institution, he will be provided with continuous psychological and counselling therapy by the psycho-social staff and that he will have an individual treatment programme. It is also stated by the Albanian authorities that he will be provided therapy with the medication he is on at present, namely Olanzapine. The Albanian authorities have also named the particular psychiatrist.

70. The Court has had regard to what both the CPT and Professor Blitz have said about the nature of the co-operation by the Albanian authorities during the CPT visit. However, the Court views the issue of co-operation with the CPT as different from the giving of direct assurances to another state with regard to the treatment of a particular individual. What is stated by the CPT is that the principle of co-operation required the recommendations to be effectively implemented in practice. Specific assurances in respect of an individual are qualitatively different to the overall lack of progress in implementing recommendations. There is no suggestion in the CPT report that there has been mala fides on the part of the authorities, the issue is lack of progress.

71. The Court specifically rejects the concern of Professor Blitz regarding the possibility that the named psychiatrist will leave. While there is always a possibility that a psychiatrist will leave his or her position, this does not establish a real risk that this respondent will be left without a replacement psychiatrist to treat him while in prison.

72. What causes the Court the most concern is the fact that there is no designated psychiatric institution to house forensic psychiatric patients. A great deal of the adverse commentary by the CPT, and indeed by the OSCE presence in Albania, is that persons who have been "declared not to be criminally responsible" (as per the 2016 CPT report at para. 41) are housed in prisons rather than in psychiatric hospitals. Those that are not found criminally responsible are by definition not prisoners and should not be treated as prisoners. No evidence has been placed before the Court and no argument made to the effect, that there was a real risk that this respondent would be found not to be criminally responsible or in Irish terms "not guilty by reason of insanity". To that extent, no real risk has been established that he will be at risk of inhuman and degrading treatment by virtue of being kept in prison when he is not a prisoner.

73. On the other hand, he is a man who, on the evidence, suffers from a serious psychiatric condition and will require treatment for that indefinitely. In Scotland, he was committed to a hospital rather than a prison. At present, confinement in a secure forensic psychiatric hospital is not available to him in Albania. The fact that he has been found criminally responsible is not decisive as to whether the authorities will have fulfilled their obligations to him as a man who is manifestly vulnerable by virtue of his chronic and serious psychiatric condition. The Court is alert to the fact that his illness requires long term treatment and supervision.

74. Counsel for the minister distinguished the *Dybeku* case on a number of grounds, one in particular being that the ECtHR was assessing treatment that had already occurred. Furthermore, in that case, Albania defended the case partly on the basis that this was a resource issue. Counsel submitted that no such response is made by the Albania authorities here, but on the contrary, they have given assurances that the respondent will receive appropriate treatment.

75. In *Dybeku*, it was partially the Government's response that this inmate had been treated the same as other inmates despite his mental health issues, that led the Court to conclude that there was a failure in their commitment to improving the conditions of detention in compliance with the recommendations of the Council of Europe. The particular conditions of detention to which the ECtHR referred, were the European Prison Rules on Health Care and in particular the requirement that sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals where such treatment is not available in prison. The Rules also provide with regard to mental health, that specialised prisoners or sections under medical control shall be available for the observation or treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12. Rule 12 provides that persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment designed for that purpose. If they are to be exceptionally held in prison there should be special regulations designed for that purpose.

76. In the *Dybeku* case, the ECtHR did not go so far as to say that to detain a person who has a serious and chronic mental health condition in a prison is, of itself, inhuman and degrading treatment. Indeed, it is implicit in its observation that the government had failed to show that notwithstanding his stay in a high security prison, those conditions were appropriate for a person with his history of mental disorder. The Court did consider that his regular visits to prison hospital could not be viewed as a solution since he was serving a sentence of life imprisonment.

77. In the present case, this Court has not been presented with medical evidence to the effect that to hold this respondent in a prison, as distinct from a forensic psychiatric unit or clinic, would be incompatible with his mental health. Dr. Skilling's evidence does not go so far. Moreover, it is instructive that he enquired about the psychiatric follow-up that would be available should the respondent be extradited and that he specifically tried to contact Durres prison. It may well be that detailed evidence would more easily be available to the respondent in Scotland for presentation to the Scottish government and, if necessary, to the Scottish courts on any appeal therefrom. It is evidence that is singularly lacking in these proceedings.

78. Furthermore, the Court is satisfied that the Albanian authorities have specific regulations regarding prisons that in the words of Professor Blitz are "in line with international and specifically European standards". Therefore, the regulatory framework with respect to his detention is also established as being in line with European standards.

79. The assurances that have been given in this case as to his psychiatric treatment and the individual care plan available to him, the regulatory framework in Albania for the treatment of prisoners and the absence of specific medical evidence contraindicating prison due to his ill-health are sufficient to satisfy the Court that the absence of a forensic psychiatric unit does not, of itself, create a real risk that this respondent will be subjected to inhuman and degrading treatment on his any extradition to Albania.

80. While there are legitimate ongoing concerns about the provision of psychiatric care in Albania for those within the criminal justice system, specific assurances with regard to the treatment of this respondent have been given by Albania. Although concern has been expressed about those assurances in the light of the ongoing concerns about psychiatric care that have been expressed in successive CPT and other reports, no evidence has been put forward that specific individual assurances with regard to treatment of persons extradited have been violated in the past by Albania. The Court is entitled to accept those assurances. It is neither necessary nor appropriate to await external scrutiny of the assurances that have been given. Indeed, the assurances relate mainly to treatment that will occur in the future to this respondent.

81. The Court notes that Professor Blitz speaks of the possibility of further reports becoming available which may either affirm or refute the Albanian government's claims of reform. The Court cannot refuse to make its decision based on reports that may become available in the future. However, if these reports do come to hand in the near future, this respondent would be able to present them to the Scottish authorities if they are supportive of his arguments.

82. In the present case, the Court is also satisfied that specific agreements between the stakeholders in the healthcare field have been entered into and implemented since the last CPT visit as per the Albanian response to the CPT report. No evidence has been put forward by the respondent to undermine this assertion. That is evidence which could have been obtained even in the absence of inter-governmental reports or a report from the National Preventive Mechanism (under the Optional Protocol to the Convention against Torture) in Albania, the People's Advocate as posited by Professor Blitz.

83. On the evidence before the Court, the Court is satisfied that there is no basis for rejecting the specific assurances that have been given in this case with respect to the treatment of this respondent. In all the circumstances, the Court is satisfied that it has not been established that there are substantial or reasonable grounds for believing that there is a real risk that this respondent will be subjected to inhuman and degrading treatment if extradited to Albania on account of his mental ill health and the conditions in which he will be detained.

Fair Procedures and Fair Hearing

84. The respondent claimed that, because of the practices within the criminal justice system that operate in Albania, he will not receive a fair trial, in particular as there are significant levels of corruption in Albania. He relied upon the evidence from Professor Blitz and from a wide variety of reports on Albania. Professor Blitz says that international monitors highlight significant corruption across many sectors of government and the judiciary. He referred to the most recent U.S. State Department Human Rights Report of 2015 in which it is said that impunity remained a problem. Government officials, including judges, were able to avoid prosecution. He stated that there had been a consistent pattern of complaints submitted to the Office of the Ombudsman.

85. The 2014 U.S. State Department Human Rights Report on Albania stated that although the Constitution provided for an independent judiciary, political pressure, intimidation, widespread corruption and limited resources sometimes prevented the judiciary from functioning independently and efficiently. There are sometimes closed hearings because security officers do not admit observers. Disciplinary proceedings had been lodged by the High Council of Justice against 19 judges and they were considering charges against 14 more.

86. The respondent conceded in his submissions that Albanian law sets out many trial procedures "that we are accustomed to" and that the 2014 U.S. State Department Human Rights Report stated that these rights "are generally respected". However, the respondent referred to that part of the report in which the U.S. State Department noted that in a number of decisions the ECtHR was critical of certain trial procedures, in particular that the authorities failed to secure or properly record witness evidence, used

evidence obtained by torture and failed to provide detainees access to a lawyer.

87. The organisation Civil Rights Defenders (previously known as the Swedish Helsinki Committee for Human Rights) states in its Country Report entitled "*Human Rights in Albania*" dated 13th August 2015, that the Albania justice system is systematically corrupt with high levels of impunity. This Report states that there are some positive steps to tackle corruption with the arrest of several public officials on charges of corruption. With respect to penal cases, it is stated that there are problems with the pro bono lawyers in such penal cases, as they are poorly paid and suffer from a low level of professionalism.

88. The level of corruption has been a cause of concern in the European Union. Various reforms are required to bring the standards in line with the judicial systems in the European Union. The Interim Opinion of the European Commission for Democracy (the Venice Commission) of the Council of Europe has stated that the Albanian Constitution of 1998, prepared in close cooperation with the Venice Commission, had resulted in the paradox that the guarantee of an independent and accountable judiciary had been bestowed on judges who were not yet independent and impartial in practice and this lead to the development of corporatist attitudes which led to wide-spread corruption and lack of professionalism. That is why there are draft reforms to "reboot" the system.

The law
89. Issues of systemic corruption or systemic injustice in the criminal justice system of a requesting state (for extradition or surrender) are matters a requested person is entitled to raise. However, the respondent must discharge a heavy onus to show that there are substantial grounds for believing that there is a real risk that he will not receive a fair trial to the extent of a flagrant denial of that right to a fair trial (see the Supreme Court in *Minister for Justice, Equality and Law Reform v. Puta and Sulej* [2008] IESC 29; [2008] IESC 30, and the High Court in Attorney General v. N.S.S. cited earlier). Flagrant in that sense is intended to convey a breach of the principles of a fair trial guaranteed by Article 6 ECHR which are so fundamental as to amount to a nullification, or destruction of the very essence of the rights guaranteed by that Article. There is a presumption in favour of a State that it will respect human rights, however, it is a rebuttable one.

90. In the case of *N.S.S.*, concerning the real risk of a breach of Article 6 rights if the respondent were to be extradited to Russia, the High Court (Edwards J.) stated:

> *"15.4.3 The respondent in this case has adduced a substantial body of evidence that is consistent in painting a picture of long standing structural weaknesses and deficiencies in the Russian judicial and criminal justice systems. The evidence in question consists of country of origin information coming from numerous independent and reputable sources such as the US State Dept, The Council of Europe's CPT, The United Nations, The UK Home Office, Human Rights Watch amongst other, and of course the evidence of Professor Bowring*
>
> *15.4.4 Amongst the weaknesses and deficiencies identified are concerns about the independence of the judiciary; biases and unfairness' in the system; a disproportionately high rate of convictions (in excess of 99%) save where public officials are being tried for abuses where the rate of convictions is much less; difficulties in defendants obtaining effective legal representation; an unhealthy relationship between prosecutors and the judiciary where excessive deference is shown to the prosecution service and judges appear biased in favour of prosecutors; an unhealthy relationship between the prosecution service and law enforcement agencies with the latter frequently coercing confessions by means of violence, sometimes amounting to torture, excessive force and ill-treatment of persons in custody, and scant respect for the presumption of innocence.*
>
> *15.4.5 The evidence is really all one way in that regard, despite a number of initiatives mentioned in the additional information furnished on behalf of the requesting state aimed at strengthening the independence of the judiciary and the prosecution service. However there has been no engagement whatever with the matter which this Court views with greatest concern, i.e., that there is strong evidence to suggest that in many Russian trials no more than lip service is paid to the presumption of innocence. In this context the Court again recalls the comments at para. 45 of the Report of the UN Special Rapporteur on the Independence of Judges and Lawyers in the Russian Federation dated 30th April, 2014, quoted earlier."*

91. The question of how to address allegations of systemic corruption in extradition cases generally, and in Albania in particular, arose in the U.K. in a series of decisions. The U.K. Supreme Court in *Kapri v. Lord Advocate* [2013] UKSC 48 dealt with a request to extradite a man to Albania to serve a sentence imposed in his absence for murder. The U.K. Supreme Court stated at para. 28:

> *"It is a sad fact that, despite all the many provisions in international human rights instruments which emphasise that everyone has the right to a fair trial before an independent and impartial judge, there are still states where the judiciary as a whole is infected by corruption. It is, of course, hard to get at the true facts. But there is no smoke without fire, and where allegations of corruption are widespread they must be taken seriously. So too must an appreciation of what corruption may lead to when it affects the whole system. It may involve simple bribery of judges and court officials, or it may involve interference with the judicial system for political reasons of a much more insidious kind. Unjust convictions may result, just to keep the system going and keep prices up. Everyone whose case comes before the courts of that country where practices of that kind are widespread is at risk of suffering an injustice. Those who are familiar with the system may know how much they need to pay, or what they have to do, to obtain a favourable decision but be quite unable to come up with what is needed to achieve that. Those who are not familiar with it will be at an even greater disadvantage."*

92. The U.K. Supreme Court observed at para. 32 that *"[t]he stark fact is that systemic corruption in a judicial system affects everyone who is subjected to it*." It was important, therefore, that a court have a close look at material in order to determine how systemic or widespread the problem is at the time of the particular hearing. That case was returned to the Scottish High Court where two expert witnesses gave evidence and there were a large number of reports from governmental, inter-governmental and non-governmental organisations.

93. In the case of *Kapri v. Lord Advocate* [2014] HCJAC 33, the Scottish High Court held at para. 132:

> *"It is abundantly clear that there is a high level of perception in Albania, including that of some judges, that corruption exists in the judicial system and elsewhere in the Albanian public sector. The court has no difficulty in concluding that corruption occurs in the Albanian judicial system, if by that is meant that it has occurred, and may again occur, in certain situations. The broad impression, upon a consideration of all the material presented, is that, so far as the criminal justice system is concerned, it may occasionally affect decisions involving high ranking politicians or organised criminals, especially on incidental or procedural matters such as bail (eg the Puka case). It may affect civil cases where*

there is a political dimension or very large sums of money involved. The extent of this is entirely uncertain. At best for the appellant, there may have been undue influence of one sort or another in criminal cases involving a single judge on matters of procedure. It may be more frequent than this, but there is simply no adequate material upon which it could be held that there are substantial grounds for believing that it exists at such a level as will necessarily involve a flagrant denial of justice in all, or even most, cases. Quite the contrary, most of the material in the reports spoken to is of a very general nature and often simply repetitive of earlier reports by the same or a similar organisation. The court is entirely satisfied therefore that there has been no evidence presented to it, and certainly no cogent or compelling evidence, that there are substantial grounds for believing that the level of corruption in the Albanian judicial system is at the "systemic" level such that it falls into that "extreme" category whereby the removal of anyone to that country would necessarily result in a violation of a Convention right. As will be seen, it is equally satisfied that there are no substantial grounds for believing that there is a risk of the appellant, in particular, being the subject of an unfair trial should he be extradited to Albania."

The Court's determination and analysis on fair trial

94. The respondent submitted that the Scottish court in *Kadri* took a deferential approach to the Albanian judicial system but that the Irish court should be more prepared to put the Albanian judicial system through, in the words of the Supreme Court in *Rettinger*, a "rigorous examination." The Court does not agree with this categorisation of the Scottish approach. Indeed, the Scottish Court, in para. 111 of its judgment, specifically referred to the requirement to carry out the examination rigorously. The references to the nature of the task at hand by the Scottish court as "*faintly invidious, if not disrespectful*" were acknowledgements of the difficulty that a court faces in giving judgment on the legal system in another state – in particular one that is a party to the European Convention on Human Rights. Moreover, the Scottish Court correctly noted that no legal system is without flaws and indeed the Scottish reference to delays in civil and criminal matters might perhaps find some resonance in this jurisdiction.

95. The respondent made the argument that the finding in *Kadri* was more nuanced in that it was a finding at para. 141 that there was "*cogent and compelling evidence, which the court accepts, that this particular appellant will obtain a fair trial upon his return to Albania*." That, it seems, was only one part of the conclusion of the Scottish Court. In fact, as stated above, "[…] *the fundamental conclusion of the court remains that, although there may well be elements of corruption in the Albanian judicial system (as there may be in those of other signatories to the Convention), there is no proper evidential basis for the conclusion that it is at a systematic or systemic level such that there are substantial grounds for believing that any person being extradited to Albania would risk suffering a flagrant denial of his right to a fair trial.* […]" (para. 141).

96. The respondent submitted that, apart from the guarantee of a retrial, there is no guarantee given about corruption. The respondent submitted that until the much needed constitutional reforms are cemented and bedded down, there is a risk of a flagrant denial of justice if the respondent were to be extradited to Albania.

97. The issue for the Court is whether there is evidence to establish substantial grounds for believing that the respondent will be at real risk of a flagrant denial of his fair trial rights if he is extradited. The Court has carefully considered all of the reports before it. Albania is a state which has had a difficult and sometimes calamitous history since the Second World War. The Vienna Commission identified issues with regard to the new Albanian Constitution which provided for the independence of the judiciary. There has been a paradoxical resultant corruption within the judiciary. The U.S. State Department notes that pervasive corruption is the most significant human rights issues and particularly within the judiciary. The U.S. State Department also notes that anti-corruption laws are not implemented effectively and officials frequently engaged in corrupt practices with impunity.

98. Corruption is, however, being tackled: Civil Rights Defenders note that some positive steps have been taken, including the arrest of several public officials on corruption charges. The 2014 U.S. State Department Human Rights Report observes that the European Commission had noted that various disciplinary proceedings had been taken against a significant number of members of the judiciary. It is also noted that there was a prosecution of the head judge of one district court, the head of the district prosecution office, the chief clerk, the chief secretary, two private citizens and a defence counsel on various charges related to active corruption, abuse of offence and similar offences. Convictions against all except the judge and prosecutor were recorded, while those trials remain outstanding. In an earlier report, it is noted that a prosecutor was sentenced to one year in prison for unlawful influence on his wife, who was a judge in the same district court. She was acquitted.

99. In the view of the court, the examples of prosecutions for corruption do not establish that this particular respondent is at real risk of being exposed to a flagrant denial of his fair trial rights. On the contrary, they establish that real and specific steps are taken to prosecute this behaviour where it can be established. Furthermore, the U.S. State Department reports that it was "sometimes" that political pressure, intimidation, widespread corruption and limited resources prevented the judiciary from functioning independently and efficiently.

100. Of considerable importance is that the U.S. State Department Country Report states that the trial procedural rights are generally respected by the government. This is significant as it is a general statement that specific rights are protected within the system.

101. The Court contrasts the evidence presented by the respondent in this case with the evidence presented in N.S.S. concerning the judicial system in Russia. In that case, "[*t]he evidence [was] all one way*." (para. 15.4.5). Of the greatest concern to the court was that in Russian trials, there was no more than lip service paid to the presumption of innocence. That is not the position here, what has been put forward is that the trial guarantees are generally respected. Furthermore, it is not being submitted that all Albanian judges are corrupt but that sometimes corruption can be a problem.

102. The Court is satisfied that, on the evidence, it has not been established that there are substantial grounds for believing that there is a real risk that the respondent will be subject to a flagrant denial of his fair trial rights under Article 6 of the European Convention on Human Rights.

The right to a retrial after trial *in absentia*

103. The respondent was tried in his absence in Albania. The Scottish Government, in seeking consent to the onward extradition of the respondent to Albania, has informed this Court that "[i]n accordance with the Second Additional Protocol [to the European Convention on Extradition, 1957], the Albanian authorities have assured us that Albania law permits re-examination of the case where an individual who has been tried *in absentia* is extradited."

104. The Albanian request sets out in some considerable detail the nature of their system of trial *in absentia* and also the relevant section of the Albanian Criminal Procedure Code, namely Article 147. The Albanian authorities also set out in considerable detail the manner in which the courts have interpreted the legal provisions regarding trial *in absentia* and how the decision to appeal may be

exercised. They also rely upon the decision of the Supreme Court of Albania which supported the giving of an advance guarantee of a retrial in the case of an extradition from another country. The Constitutional Court rejected a request by the Supreme Court to address the constitutionality of provisions regarding the trial *in absentia*. According to the Albanian authorities, this means that it is only in clearly defined circumstances of voluntary waiver of the right to participate in trial after notification of the trial, that a trial in absentia is legitimate.

105. In his written submissions, the respondent quoted extensively from the U.K. High Court decision setting out the relevant Albanian law in the cases of *Mucelli, Hoxhaj and Gjoka v. Albania* [2012] EWHC 95 (Admin). The applicant accepts that statement:

> ***"The Albanian Law***
>
> ***Constitution and legislation***
>
> *12 Albania is a contracting state to the European Convention on Human Rights. Article 17.2 of the Albanian Constitution provides specifically that the limitations of rights and freedoms under the constitution cannot infringe Convention rights. Article 33 of the constitution confers a right to be heard before judgment, although a person who evades justice does not benefit from this right. Article 43 of the constitution confers a right to appeal a judicial decision to a higher court, except when the constitution provides otherwise. Article 116.1 sets out a hierarchy of norms: a. the Constitution; b. ratified international agreements; c. the laws; and d. normative acts of the Council of Ministers. Under Article 122 ratified international agreements constitute part of the internal juridical system, are directly applicable in Albania if self-executing, and have superiority over incompatible domestic laws.*
>
> *13 Albania is a signatory to the European Convention on Extradition, including the Second Additional Protocol , which contains a guarantee of retrial in Article 3 .*
>
> *"Article 3 — The Convention shall be supplemented by the following provisions:*
>
> *'Judgments in absentia*
>
> *When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However, extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.""*
>
> *Albania ratified the Convention and Additional Protocols by Law 8322 of 2 April 1998.*
>
> *14 On 3 December 2009, the Albanian Assembly enacted Law No 10 193 "On Jurisdictional Relations with Foreign Authorities in Criminal Matters". It came into force the following year. Article 51 is entitled "guarantees in connection with the extradited person". Article 51.4 provides for the review of a conviction in absentia against an extradited person where the Ministry of Justice has given a guarantee to that effect to the requested state:*
>
> *51.4: "A final decision rendered against the extradited person by the local judicial authorities in his absence may be reviewed at the request of the extradited person, if the Minister of Justice has given such a guarantee to the requested State. The request for review is submitted within 30 days from the arrival of the extradited person in Albanian territory and its examination follows the rules of the Code of Criminal Procedure ".*
>
> *15 The Albanian ("the CCP") contains various fair trial rights. Thus Article 48 gives a defendant the right to choose a lawyer, although in the absence of such a choice it may be made by a relative: Article 48.3. More important for present purposes is that Article 147.2 CCP confers the right on persons where decisions have been rendered in their absence to request the renewal of the time limit to appeal.*
>
> *147.2 "If the decision was rendered in his absence, the defendant may request the reinstatement of the time-limit to appeal when he proves that he has not been notified of the decision."*
>
> *Article 147.3 continues that that request must be within 10 days from the date when the person has been actually notified of the act which makes the retrial of the case possible. Article 148 then provides for the effects of a reinstatement of a time-limit.*
>
> *148.1 "The court which he has dicided the reinstatement of the time-limit, upon request of the party and so far as it is possible, orders the repetition of the operations in which the party was entitled to participate."*
>
> *16 Under Article 410 CCP a defendant may appeal a conviction personally or through his defence lawyer. Article 410.2 provides that, if a defendant has been sentenced in absentia, a defence lawyer may only appeal under the defendant's power of attorney. Articles 449–461 of the CCP govern the application for a review of a final judgment. Article 450 sets out four instances when a person may request the review of a decision:*
>
> *"(a) when the facts of the grounds of the decision do not comply with those of another final decision; (b) when the decision has relied upon a civil court decision which has subsequently been revoked; (c) when following the decision new evidence has emerged or has been found which independently or along with previous evidence proves that the decision is wrong; and (d) when it is proved that the decision was rendered as a result of the falsification of judicial acts or evidence considered by law as a criminal offence."*
>
> *Appeals are dealt with in Articles 422-430 CCP . Under Article 451 the accused or the prosecutor may file a request for a review in accordance with the grounds of review in Article 450 ."*

106. In *Mucelli, Hoxhaj* and *Gjoka*, the respondent quoted extensively from the conclusions of the England and Wales High Court in those cases. The applicant also relies upon the dicta contained therein. The High Court stated:

"48 The issue for us in each of these cases is whether there is a practical and effective right of retrial, consonant with Article 6 ECHR, if these three applicants are extradited to Albania. In each case the Albanian authorities have asserted that there is that right. The so-called supplemental "guarantees" (tracking the language of Article 51 of Law 10 193 of 3 December 2009) by the Albanian Ministry of Justice assert that the right exists. Given the independence of the judiciary the Ministry of Justice could not go further. The language of expectation which Mr Hardy QC underlined is explicable as the expectation that the applicants will apply for a retrial under Article 450.

49 However, mere assertions by the Albanian authorities that there is the right to retrial is inadequate in the light of the history. What is necessary is that these assertions be made good as a matter of Albanian law and practice. In that regard I accept the submissions of Ms Barnes, who appeared for Fair Trials Abroad and who invoked MSS v Belgium [2011] 53 EHRR 2 , [353], [359].

50 At the outset I underline the point my Lord, Toulson LJ, made in the course of argument: the court's assessment of Albanian law and practice must turn on an evaluation of the expert evidence. Toulson LJ drew on his experience in the Commercial Court, where English lawyers were sometimes tempted to offer their own interpretation of foreign law. There, as here, that temptation must be resisted. The obvious reason is that neither the English lawyer nor the English court can have a full understanding of the context of foreign constitutional and statutory instruments or judicial decisions. The experts have that understanding. Their views may be in conflict and the court may have to reconcile them but not primarily through its own interpretation of the foreign law materials.

51 In my view the building blocks for evaluating Albanian law and practice are firstly, that Albania is a contracting state of the European Convention on Human Rights and therefore subject to the jurisdiction of the European Court of Human Rights. The Convention has been explicitly adopted by article 17 of the Albanian Constitution and under Article 122 takes precedence over domestic law. Albania is also a signatory to the Second Additional Protocol to the European Convention on Extradition which provides, as we have seen, for a guarantee of a re-trial in Article 3. There is also the enactment of Article 51.4 of Law No 10 193 of 3 December 2009. All these are a necessary, but not a sufficient, condition for a conclusion as to whether there is a practical and effective right of retrial in Albania.

52 Next, there is the jurisprudence. The ES case is the first of the trilogy of Albanian decisions pertinent to the issue before us. It is clear that that case turned in the Constitutional Court on Article 147 CCP; there is no mention of Article 450 CCP . It established that a person tried in absentia had a right to have his case re-opened, even if he had been represented at trial by a family appointed lawyer. The case then went to the Supreme Court. Professor Kokona makes the point that there is a lack of clarity in the Supreme Court in ES because of the combination of considerations of procedural principle and the factual merits of the case. In other words, as I understand it, the Supreme Court considered the merits of ES's case and that was at least an element in the court's decision to refuse his claim. Professor Kokona also explains that there was no evidence in ES of a Ministerial guarantee of a retrial. So despite that distinctly off beam answer the Albanian Ministry of Justice gave in its 22 December 2011 reply to the Secretary of State's questions about ES , it seems to me that whatever happened in ES is of no relevance to the issues before the court.

53 Mece is a crucial decision. There was a Ministerial guarantee there given to the Spanish court that Mece would have a retrial. On his return to Albania Mece applied to the Supreme Court for a retrial under Article 450 CCP. The Supreme Court in its 17 September 2010 decision held that Mece should obtain a retrial. The Ministry of Justice has explained that Mece changed Albanian law, that it is binding on lower courts and that Mr Mucelli falls exactly within the ruling. Professor Kokona accepts Mece as a positive step, although she points to the conflicting use of Article 147 CCP in ES and Article 450 CCP in Mece. She accepts, however, that Bogdani followed Mece . Mr Blaxland QC contends that there is no evidence about whether Mece has been retried. Even if it is not too late in the day to be advancing that point, the fact is that we do know what happened in Bogdani. To my mind that is determinative.

54 Bogdani followed his extradition from this country consequent on the decision of this court: [2008] EWHC 2065. Applying Mece , the case was sent to the Court of Appeal in Gjirokastër, and we have Judge Qirjazi's report about how the case is proceeding. Professor Kokona majors on the procedural hurdles and delays in the case, but these are explained by the Ministry of Justice. The crucial point is that the Supreme Court has on at least two occasions held that there is a right of retrial and we have chapter and verse on what happened in Bogdani's case. There were delays but they have been explained. Mr Mucelli will need to act quickly on return, and he will need a lawyer to make his Supreme Court application. Despite the absence of legal aid in Albania for the purpose, there is no evidence before us that Mr Mucelli will not be able to make a timely application or obtain legal assistance.

55 In my view, the law and practice in Albania is now such that there is no real risk that Mr Mucelli will suffer a flagrant denial of justice on his return to Albania. He is entitled to a retrial of the merits of the case against him. As for Messrs Hoxhaj and Gjoka, I cannot see that the District Judge erred in her conclusion that she was sure that they would be entitled to a retrial or (on appeal) a review amounting to a retrial on their return to Albania. I am fortified in these conclusions because of the history of Albanian extradition attempts. The Albanian authorities must be acutely conscious of the fact that these present cases will be observed carefully when these three persons are extradited. There is also the scrutiny of Albanian extraditions in the European Court of Human Rights, an ongoing scrutiny because, as Professor Kokona explains, the Sulejmanni case is still before that court."

107. In the present case, the evidence from Professor Blitz was short and perhaps not to the point. He conflated this issue of retrial with the question of judicial corruption and the lack of independence. He referred to the Mucelli cases but draws the Court's attention to the fact "that while the above cases were decided on the grounds that the presiding judge was not persuaded that the applicants would suffer 'a flagrant denial of justice' on their return, there is little evidence of the return of prisoners suffering from severe mental illness." He then refers to the issue of the detention of convicted persons suffering mental health problems in ordinary prisons. His final conclusion is that "[…] while there is a possibility that the defendant would be able to secure a retrial, this right does not appear to be automatic and assurance would need to be given that the defendant is entitled to a retrial and may be represented."

108. In the present case, the Albanian authorities have given a very clear guarantee of "the exercise and respect of the right to retrial of [the respondent]". In so far as the respondent seeks to undermine the undertaking as to his right to retrial, there must be reasonable or substantial grounds to show that there is a real risk that he will be subjected to a flagrant denial of justice on his return home. The Court notes that Albania is a member of the Council of Europe and a party to the ECHR and that there is a presumption, albeit a weaker one than that for an E.U. member state, that Albania will comply with its fundamental rights obligations. Those fundamental rights include the right to a fair trial at which one is present. Furthermore, and in particular, the Albanian authorities have given an express guarantee as to a retrial.

109. The Court has no evidential basis for the claim that there is a real risk of a flagrant denial of rights. In so far as the respondent has presented evidence through Professor Blitz that this raises particular issues because of this respondent's mental health condition, the Court rejects that contention. There is no evidence whatsoever that his mental health would not permit him from exercising this right and indeed, in Dr. Skilling's report, it is reported that this respondent had weighed in the balance his right to a retrial in considering whether to consent to his surrender. In so far as the respondent refers to corruption as a concern in this regard, the Court refers to its rejection of this claim as set out above.

110. In so far as the respondent has raised the issue that there is no automatic guarantee of a retrial under the law, it is clear in the present case that there is such a guarantee. The Court also observes that this particular respondent has not placed any specific evidence before the Court to show that he would not be able to avail of the retrial because of any particular conditions which apply to him. In light of the guarantee, which the Court has no basis for rejecting, the Court is satisfied that it has not been established that there are substantial grounds for believing that there is a real risk that, on the respondent's return, there will be a flagrant denial of justice by virtue of his previous trial *in absentia*.

Delay
111. The respondent submitted that the delay in the present case was a bar to onward extradition as it amounted to a breach of the Article 38 constitutional guarantee to expeditious trial and to the right to a trial within a reasonable time under Article 6 of the ECHR. The respondent accepted that the Supreme Court case of *Minister for Justice v. Stapleton* [2008] 1 I.R. 669 applied as regards to general propriety of the trial courts dealing with delay. The respondent submitted, however, that the decision was not absolute in its terms and relied upon the decision in *Minister for Justice v. Hall* [2009] IESC 40 in which it was stated by the Supreme Court that there may be occasions when it is more appropriate to litigate delay in the requesting state. The respondent relied upon the particular circumstances here, the length of time since the alleged offences, the time taken since the enactment of the Act of 2003 and the taking of the proceedings, the fact that the respondent has in the interim begot a family, his mental health issues and his current treatment for same in Scotland.

112. The Supreme Court has been clear that, in general, issues such as prosecutorial delay and its consequences are more appropriately litigated in the requesting state which is the state of trial. Without having to consider what if any exceptions may apply to this matter (although it is clear that delay in the context of Article 8 ECHR and the public interest in the extradition may arise for consideration), in the present case, the case being made by the respondent falls at the first hurdle. He has made a claim of what is, in effect, prosecutorial delay without providing any evidential basis for same.

113. This case involves a man who apparently changed his name when he left Albania and lived in Ireland and in Scotland for about 20 years. He has given misinformation to the authorities in this jurisdiction and in Scotland and, in large part, the delay is due to his own behaviour. There is nothing to suggest that there was any delay on the part of the Albanian government in pursuing him. There is also no fault on the part of the Scottish authorities, as it was only in June 2014 that it came to light that he was in fact Astrit Picari and that he had been convicted in his absence of murder in Albania. It appears that both the Albanian authorities and the Scottish government acted without delay once his identity became known. Moreover, the respondent has not made a case that the delay will prejudice him in respect of any particular matter. Finally, the respondent has not put forward any medical evidence to show that his mental illness is a ground that would impact upon a fair trial, either by reason of delay or otherwise.

114. Therefore, the Court is satisfied that even if "delay" were to be a ground for refusing to give onward consent, there is no evidential basis for refusing consent in the circumstances of this case.

Family Life
115. There was no disagreement between the parties on the law to be applied in this area. The Irish High Court has set out in *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 twenty-two legal principles that the Irish courts must consider. It is unnecessary to repeat those here. The respondent also referred to the case of *Minister for Justice Equality and Law Reform v. Machaczka* [2012] IEHC 434 in which the Court prohibited the surrender of a respondent on Article 8 grounds in circumstances where he suffered from mental illness and was at risk of committing suicide if returned to Poland.

116. In the view of the Court, is it unnecessary to carry out any elaborate factual analysis as this is not a case which can be said to be truly exceptional in it features. This was the approach approved by the Supreme Court more recently in *Minister for Justice and Equality v. J.A.T.* (No. 2) [2016] IESC 17 where it was stated by O'Donnell J. at para. 11 as follows:

> *"In any future case, where all or any of the above factors may be relied on, it would not, in my view, be necessary to carry out any elaborate factual analysis or weighing of matters unless it is clear that the facts come at least close to a case which can be said to be truly exceptional in its features. Even in such cases, which must be rare, it is important that the considerations raised are scrutinised rigorously."*

117. In the present case, the respondent is sought for the offence of murder. Any delay, or more specifically any lapse of time in seeking him is explained by his departure from Albania and assumption of a different name. Although he is in a Scottish forensic hospital suffering from a serious mental illness, he is not suicidal and indeed his illness is well controlled by medication. His claim that this will affect his family life is completely unsustainable in circumstances where he has no contact with his children in Ireland. Furthermore, he has a son in Albania with a former partner and his return there on foot of any extradition would put him closer to those members and indeed he has specifically expressed the view that he would be closer to his family in Albania when explaining to Dr. Skilling why he consented to his extradition. That short synopsis demonstrates that this Court is not required to give further detail as to why there is no basis for his claim that consent to onward extradition would amount to a disproportionate interference with his family life.

Cumulative Grounds
118. The respondent has also claimed that the entire set of circumstances in this unusual case are such that the surrender of the respondent would amount to a violation of his constitutional rights and his rights under the European Convention on Human Rights. In essence, the respondent repeats what has been said above, in particular with reference to his family.

119. The Court has considered carefully each of the respondent's individual claims as above. The Court has rejected each one. The Court is not satisfied that there is an entitlement to claim an "omnibus" breach of rights over and above the consideration of each particular claim. A cumulative set of circumstances may affect a court's decision under one particular heading, for example, under a claim with regard to family and personal rights the court may consider the totality of the circumstances including the effect of delay on the public interest in surrender. That is entirely different to the argument that, despite rejecting each individual ground, the Court should refuse consent on the basis of the cumulative evidence and submissions made before it.

120. The Court is bound to act in accordance with law and to give its consent to onward extradition unless that extradition would be prohibited under the Extradition Act 1965, as amended. There may be aspects of a case that "*evoke concern, dissatisfaction and some degree of sympathy*" in the words of O'Donnell J. in *Minister for Justice and Equality v. J.A.T.* (No. 2). The role of the court is not to test this matter "*against some generalised consideration of personal sympathy*" but to apply the law. Unless the cumulative grounds point to a breach of a particular right or to a prohibition on surrender, the Court must set aside any personal sympathy it might have and act upon the law. In this case, there is simply no basis for holding that the cumulative points offered on behalf of this respondent amount to a legal or constitutional ground for prohibiting the giving of consent to his onward surrender to Albania.

Conclusion

121. For the reasons set out above, the Court is satisfied that it can give its consent to the United Kingdom (Scotland) to extradite this respondent to Albania.