



Neutral Citation Number: [2024] EWHC 3055 (Admin)

Case No: AC-2023-LON-003092, AC-2023-LON-002174 & AC-2022-LON-003609

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/11/2024

Before :

Lord Justice Dingemans
(Vice-President of the King's Bench Division)
- and -
Mrs Justice Stacey DBE

Between :

ERDINC UCKAC
AYKUT SAHIN

Appellants/
Requested
Persons

-and-

THE GOVERNMENT OF THE REPUBLIC OF
TÜRKIYE

Respondent/
Requesting
State

Helen Malcolm KC and Alexander dos Santos (instructed by **the Crown Prosecution Service**) for the **Government of the Republic of Türkiye**
Edward Fitzgerald KC and Benjamin Seifert (instructed by **Stephen Fidler & Co**) on behalf of **Mr Uckac**
Edward Fitzgerald KC and Graeme Hall (instructed by **Birnberg Peirce Solicitors**) on behalf of **Mr Sahin**

Approved Judgment

This judgment was handed down remotely at 2.15pm on 28.11.2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Dingemans and Mrs Justice Stacey:

1. This is the judgment of the Court. It follows our judgment dated 17 September 2024 [2024] EWHC 2351 (Admin) (the first judgment) delivered after the hearing of appeals concerning the Government of the Republic of Türkiye (the requesting state) and Cihan Demir, Erdinc Uckac and Aykut Sahin (the requested persons).
2. The common issue on the appeals was whether, if extradited, there was a real risk that the rights of the requested persons under article 3 of the European Convention on Human Rights ("ECHR") would be breached. This involved consideration of the prison conditions in which the requested persons will be held if extradited, and the extent to which there had been breach or compliance with the "Yalvac assurance" given by the requesting state in previous extradition cases. The Yalvac assurance is that the requested persons will be held, if extradited, in Yalvac T Type Closed Prison ("Yalvac") with a minimum personal space of 4 square metres. The Yalvac assurance has been provided consistently since 2019 and was provided in each of the three cases the subject of the appeals giving rise to the first judgment. Also in issue was the effect of breaches of the assurances and the reliability of the Yalvac assurances given in each of these cases by the requesting state, and whether the court should request further assurances from the requesting state.
3. The requesting state's appeal against the discharge of Mr Demir was dismissed for the reasons given in the first judgment, and he is not a party to this further judgment. An appeal by Mr Sahin, and an application for permission to appeal by Mr Uckac, on other grounds were both dismissed and refused for the reasons given in the first judgment. On the issue of prison conditions, and so far as is material, for the detailed reasons contained in the first judgment we concluded: "... (2) the evidence before this court shows that there is a real risk of impermissible treatment contrary to article 3 of the ECHR of persons held in prisons in the requesting state, absent effective assurances; (3) there was no bad faith by the Turkish authorities in the sense of a deliberate decision on the part of the requesting state, or any of its branches, to delay transferring extradited persons to Yalvac. There was, however, a culpable failure to co-ordinate the respective branches of the state involved in giving effect to the Yalvac assurance so that impermissible delays in the transfer of extradited persons who had the benefit of the Yalvac assurance occurred; (4) we will stay the appeal advanced on the grounds related to prison conditions, pending receipt of further assurances as set out in the Annex to the judgment; ...".
4. The assurances requested as set out in the first judgment were:
 - "1. The Government of Türkiye guarantees that from no later than 48 hours after his arrival in Türkiye and throughout his time in detention before trial Mr Uckac will be detained in Yalvac T Type Closed Prison or Yalvac open prison.
 2. The Government of Türkiye guarantees that from no later than 48 hours after his arrival in Türkiye and throughout his time in detention for service of his sentence approved and finalised by the Court of Cassation in Türkiye on 11 November 2019, Mr Sahin will be detained in Yalvac T Type Closed Prison or Yalvac open prison.

3. The Government of Türkiye guarantees that Mr Uckac may appear at his trial by video-link from Yalvac, and that if he is to be held in another prison closer to the court for the purposes of the trial during any part of the trial (for example when he is giving evidence), that he will be detained in an institution with personal space of 4 square metres.

4. The Government of Türkiye guarantees that it will, through one of its departments, monitor regularly compliance with all the assurances set out above.

5. The Government of Türkiye guarantees that it will report to the United Kingdom Central Authority within 21 days if any extradited person who has been provided with the Yalvac assurance is not being detained in Yalvac T Type Closed Prison or Yalvac open prison and the reasons for the non-compliance.”

5. The underlining has been added to the assurances as it helps to identify the respective wording on which there are agreed changes or issues between the parties.
6. We concluded the first judgment by requiring a response from the CPS within 42 days of the date of the handing down of that judgment. We also gave “leave to apply, on a reasoned basis, to both parties as regards the wording of the further assurances, the nature of the monitoring of the Yalvac assurance and the timing for their production”.

The assurances and further submissions about the wording of the assurances

7. Some changes to the wording of the assurances were proposed on behalf of the requested persons in submissions dated 24 September 2024. It appears that the requesting state responded to those submissions in the form of a table on 7 October 2024 agreeing to some changes, but rejecting other proposed changes to the wording of the assurances. The requesting state provided the assurances in documents dated 8 and 24 October 2024. In respect of the first and second assurances these were provided, and in text below the assurances it was stated “However, if the penal institution where they are accommodated notifies that there is a different threat to their safety or if they are requested to be transferred for disciplinary reasons, their situation can be evaluated and they can be transferred to another penal institution”. This text has given rise to another issue between the parties.
8. It did not prove possible for the parties to agree all of the matters, and further directions were given providing for the parties to lodge further written submissions on the matters in issue, and to identify whether a further hearing was necessary. On 7 November 2024 the requested persons lodged a “Note of points of difference on which the court’s ruling may be necessary” and the requesting state lodged a “Respondent’s Reply to Appellants’ Note of points of difference on which court’s ruling may be necessary” together with the “Requesting State’s response to the requested persons’ submissions regarding assurances” which had been sent to the requested persons on 7 October 2024.
9. The parties confirmed that they did not wish to lodge further written submissions and the parties agreed on 11 and 12 November 2024 that a further oral hearing was not necessary. We are very grateful to Mr Fitzgerald KC, Mr Hall and Mr Seifert on behalf

the requested persons, and Ms Malcolm KC and Mr dos Santos on behalf of the requesting state and their respective legal teams for their helpful submissions and assistance.

Some agreed changes to the wording

10. It was common ground that, in respect of the fifth assurance, the period within which a breach of the assurance must be reported should be “tethered to an event” as the parties put it. This was when any official or authority within the requesting state became aware of the breach.
11. It was common ground that, in respect of the fifth assurance, the wording should be changed from “is not being detained” to “is not being, or has not been, detained in”. This was to ensure that the obligation to report breaches was not limited to present or ongoing breaches.

The remaining issues

12. It appears that the following five matters are in issue between the parties: (1) whether the wording of the first and second assurances has been undermined by the statement by the requesting state in the text underneath the assurances that “... if the penal institution where they are accommodated notifies that there is a different threat to their safety or if they are requested to be transferred for disciplinary reasons, their situation can be evaluated and they can be transferred to another penal institution” and what should be done about it; (2) whether the requesting state should specify a department that should make disclosure of any failure to keep the Yalvac assurance in respect of the fourth and fifth assurances; (3) whether the time for reporting a breach should be 7 or 21 days in the fifth assurance; (4) whether there should be a new assurance for both Mr Uckac and Mr Sahin that the requesting state or a specified department should be required to confirm within 7 days that they have been in fact detained in accordance with the assurances; (5) the parties also raised the issue about how the agreed, and any other directed changes, to the wording of the assurances were to be made.

The effect of the wording about security and disciplinary issues – issue one

13. The requested persons are right to point out that the wording about the possible need to make moves in the light of security and disciplinary issues does affect the first and second assurances. On the other hand if there are security and disciplinary issues, then a move might be required to ensure the safety of the requested persons or other prisoners. Given that the real risk of impermissible treatment of detained persons in prison in Türkiye related to the space available to prisoners, which was the reason for requiring the Yalvac assurance, we will seek a further assurance to ensure that in the event of a move of the requested persons for security or disciplinary issues, they are provided sufficient space, and that the UK authorities are alerted to the move. The assurance should be: “The Government of Türkiye guarantees that in the event that either Mr Uckac or Mr Sahin require to be moved from Yalvac because of security or disciplinary issues, they will be detained in an institution with personal space of 4 square metres, and the move will be reported to the UKCA within 21 days of the move”.

The requesting state to provide the assurance – issue two

14. We consider that the current wording of the fourth and fifth assurances, requiring the requesting state to monitor compliance and report any breaches, is sufficient. It is very often the requesting state that is responsible for providing the assurance in extradition cases, see for example the authorities referred to in paragraph 84 of the first judgment. It is right to record that, for the reasons given in paragraphs 91 and 92 of the first judgment, there was a culpable failure to co-ordinate respective branches of the state. It is for that reason that we requested the further assurances set out in the first judgment, but we do not consider it would assist to require the state to specify which departments have which responsibility, and which department should provide which assurance. This is because the responsibilities of departments may change, and it is no function of this court to become involved in micro-managing the way in which assurances are provided. The most important point is that it is the obligation of the requesting state to ensure compliance with the assurances provided, and the wording of the fourth and fifth assurances was designed to underline that point.

21 day time limit – issue three

15. The 21 day time limit is the time often referred to in assurances. This is because there is a need to allow time for the situation to be assessed, reported within the relevant structures of Government, prepared for further reporting and translated. It is right to acknowledge that the requested state did not comply with some previous assurances as detailed in the first judgment, but giving a time limit which may lead to another breach of assurance is unlikely to assist anyone.

No new assurance about Mr Uckac and Mr Sahin – issue four

16. We do not consider that it is necessary for the requested state to provide another assurance, to the effect that they have in fact detained Mr Uckac and Mr Sahin in accordance with their assurances. The structure of the assurances set out in the first judgment, as amended in this judgment, is intended to ensure that there will be compliance with the Yalvac assurances, that the compliance will be monitored, and that breaches will be reported.

Giving effect to the changes to the wording of the assurances – issue five

17. The agreed changes to the wording of the fifth assurance mean that the wording of the fifth assurance that should be provided now reads:

“5. The Government of Türkiye guarantees that it will report to the United Kingdom Central Authority, within 21 days of any official of the Government of Türkiye becoming aware of the breach, if any extradited person who has been provided with the Yalvac assurance is not being, or has not been, detained in Yalvac T Type Closed Prison or Yalvac open prison and the reasons for the non-compliance.”

18. For the reasons given under issue one above there should be an additional assurance provided as follows:

“The Government of Türkiye guarantees that in the event that either Mr Uckac or Mr Sahin need to be moved from Yalvac T Type Closed Prison or Yalvac open prison because of security or disciplinary issues, they will be detained in an institution with personal space of 4 square metres, and the move will be reported to the UKCA within 21 days of the move”.

19. Given that the requesting state has been actively involved in the process of providing the assurances, we will direct that the amended assurance and further assurance as set out in paragraphs 17 and 18 should be provided within 21 days (and not the 42 days provided in the first judgment) of the date of the hand down of the judgment. We require a response from the CPS within 21 days of the date of the handing down of the judgment.

Conclusion

20. For the detailed reasons set out above, we continue the stay the appeal of Mr Sahin and Mr Uckac on the grounds related to prison conditions, pending receipt of the amended assurance set out in paragraph 17 above and the further assurance set out in paragraph 18 above.