Neutral Citation Number: **[2025] EWHC 809 (Admin)**

Case Nos: AC-2024-LON-001160, AC-2024-LON-001210 and AC-2024-LON-002038

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3/04/25

Before:

LORD JUSTICE COULSON
MR JUSTICE JAY

- -

Between:

(1) ION CIORICI
(2) VITALIE CODREANU
(3) SERGHEI PAVEL LUNGU **Appellants**

- and –

GOVERNMENT OF MOLDOVA **Respondent**

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- -

David Josse KC and Peter Caldwell KC (instructed by **Coomber Rich Ltd**) for the **First Appellant**
David Josse KC and Ania Grudzinska (instructed by **Hollingsworth Edwards Solicitors**) for the **Second Appellant**
David Josse KC and Martin Henley (instructed by **AM International Solicitors)** for the **Third Appellant**
Richard Evans (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 25 March 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 3 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE JAY

LORD JUSTICE COULSON and MR JUSTICE JAY:

INTRODUCTION

1. This is the judgment of the Court.

2. The Government of Moldova ("the Respondent") has submitted requests for the extradition of all three Appellants. The Respondent is designated as a Part 2 territory and section 70 of the Extradition Act 2003 ("the 2003 Act") applies to these requests. The Appellants opposed their extradition and their cases were heard by District Judge Tempia ("the District Judge") sitting at Westminster Magistrates Court over five days in November 2023. In February and April 2024 the District Judge handed down a number of judgments. The upshot was that all three cases were sent to the Secretary of State at various times pursuant to section 92 of the 2003 Act. Extradition was subsequently ordered for each Appellant. The Appellants now appeal to this Court.

3. The main issue in this appeal, for which permission has been granted, is whether, in the light of various assurances the Respondent has given, the District Judge was right to conclude that the Respondent has proved that the Appellants would not face a real risk of torture and/or inhuman or degrading treatment or punishment in two Moldovan prisons contrary to Article 3 of the ECHR. The most important facet of this main issue is the question of inter-prisoner violence. There are separate, subsidiary issues raised by two of the Appellants, for which permission has not been granted and renewed applications are advanced before us, concerning Article 8 of the ECHR and dual criminality.

4. Mr David Josse KC led for the Appellants on the Article 3 issue. Mr Peter Caldwell KC, Ms Ania Grudzinska and Mr Martin Henley addressed us on various discrete points germane to the main issue. Mr Caldwell, for Mr Ion Ciorici, addressed us on his renewed application for permission on Article 8. Mr Henley, for Mr Serghie Lungu, addressed us on his renewed application for permission on Article 8 and dual criminality. The Respondent was represented by Mr Richard Evans. We are grateful to all Counsel for their detailed and helpful written and oral submissions.

THE FACTUAL BACKGROUND

The Extradition Request in relation to Mr Ion Ciorici

5. The Respondent seeks the extradition of Mr Ciorici pursuant to a request dated 10 September 2022 and certified by the Secretary of State on 19 October 2022. He was subsequently arrested and has remained on conditional bail throughout the proceedings. Mr Ciorici's extradition is sought to enforce a custodial sentence of five years' imprisonment for the offence of causing death by dangerous driving whilst under the influence of alcohol committed on 27 October 2013. In light of the issues raised in this appeal, we need not dwell on the detail of the offence. Mr Ciorici was originally sentenced to five years' imprisonment suspended for five years. However, on the prosecutor's appeal the sentence was on 25 February 2015 varied to five years'

immediate imprisonment. The Court ordered that Mr Ciorici be held in open prison conditions.

The Extradition Request in relation to Mr Vitalie Codreanu

6. The Respondent seeks the extradition of Mr Codreanu pursuant to a request dated 1 June 2022 and certified by the Secretary of State on 28 October 2022. He was subsequently arrested and has remained in custody throughout the proceedings. On 6 April 2018 he was sentenced to a term of nine years' imprisonment for offences of kidnap and rape committed on 3 April 2017. Again, the detail is not relevant for present purposes, but his status as a sex offender in a Moldovan prison obviously is. The only point raised in Mr Codreanu's case was under Article 3.

The Extradition Request in relation to Mr Serghie Lungu

7. The Respondent seeks the extradition of Mr Lungu pursuant to a request dated 19 June 2020 and certified by the Secretary of State on 13 July 2020. He was subsequently arrested and has remained on conditional bail throughout the proceedings. It is alleged against Mr Lungu that he "by recklessness caused serious injury to bodily integrity and health, action committed in a state of intoxication". If convicted, a sentence of between four and eight years' imprisonment will be imposed.

8. The events in question occurred at approximately 5:20am on 5 August 2015. Mr Lungu failed to give way at a crossroads to a truck that was approaching from the right (in Moldova, vehicles drive on the right-hand side of the road). There were no signs of braking and a collision occurred, causing serious injury to Mr Lungu's front-seat passenger. Mr Lungu's blood alcohol reading was 0.7g/l which is slightly below the drink-drive limit in this country. Under Moldovan law, this is described as "intoxication of a minimum degree". A further feature of the case was that Mr Lungu was driving a right-handed vehicle, which is only permitted when transiting through Moldova.

THE LEGAL FRAMEWORK

Article 3 and Prison Conditions

9. The governing legal principles were not substantially in dispute, and we can therefore be brief.

10. Pursuant to section 87 of the 2003 Act, the issue before the District Judge was whether the Appellants' extradition would be compatible with their Convention rights: in this context, their rights under Article 3.

11. The leading authority on the decision-making process to be carried out by an extradition court remains the decision of this Court (Hickinbottom LJ and Jeremy Baker J, as the latter then was) in *Georgiev and others v Bulgarian Judicial Authorities* [2018] EWHC 359 (Admin). Hickinbottom LJ gave the lead judgment. In short, an initial burden rests upon a requested person to establish by clear and cogent evidence that there are substantial grounds for believing that he would, if surrendered, face a real risk of being subjected to treatment that would amount to a violation of Article 3 in the receiving

country. It is common ground in the present case that the Appellants have discharged that initial burden. In these circumstances:

> "8(iv) … then the legal burden shifts to the requesting state, which is required to show that there is no real risk of a violation: as it has been said, the burden upon the requesting state is "to discount the existence of a real risk" (*Aranyosi* at [103]) or "to dispel any doubts about it" *(Saadi* at [129]). Requiring a party to dispel any doubts as to a particular risk undoubtedly imposes a very heavy burden, although I am unconvinced that it is necessary or appropriate to put it formally in terms of the criminal standard of proof.
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> (v) The requesting state might satisfy that burden by evidence that general prison conditions are in fact article 3-compliant. However, even where it cannot show that, that does not result in a refusal to surrender, because the assessment of whether there will be a breach of human rights is necessarily fact-specific. Therefore, where the court finds that there is a real risk of inhuman or degrading treatment by virtue of general prison conditions, it must then go on to assess whether there is a real risk that the *particular individual* will be exposed to such a risk.
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> (vi) Given the importance of extraditing persons who face criminal charges or sentence in another jurisdiction and the principle of mutual respect, that fact-specific exercise requires the court to make requests of the requesting judicial authority under article 15(2) of the Framework Decision for information concerning the conditions in which the individual will be held that it considers necessary for the assessment of that risk, including information as to the existence of procedures for monitoring detention conditions.
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> (vii) The information provided may include assurances from the requesting contracting state, designed to provide a sufficient guarantee that the person concerned will be protected from treatment that would breach article 3. In the evaluation of such assurances, relevant factors include the nature of the relationship between the requesting and requested judicial authorities and the states of which they are a part, the human rights situation in that other jurisdiction, the subject matter of the assurance and the nature of the risk involved. It also has to be conducted in the light of the principle of mutual recognition and trust between those authorities and states: where the requesting state is a signatory to the ECHR and a Member State of the European Union, there is a strong presumption that it is willing and able to fulfil its human rights obligations and any assurances given in support of those obligations. An assurance given by such a state must be accepted unless there is cogent reason to disbelieve it will not be fulfilled.

> (viii) In particular, assurances have to be evaluated against four conditions (identified by Mitting J in *BB* at [5], and approved in *Zagrean* at [52] as being consistent with Strasbourg jurisprudence in the form of *Othman*) which must generally be satisfied if the court is to rely upon them, namely:
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> "(i) the terms of assurances must be such that, if they are fulfilled, the person returned will not be subjected to treatment contrary to article 3;
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> (ii) the assurances must be given in good faith;
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> (iii) there must be a sound objective basis for believing that the assurances will be fulfilled;
>
> (iv) fulfilment of the assurances must be capable of being verified."
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> I shall refer to these as "the Zagrean criteria".
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> (ix) Where the further information (including any assurances given) satisfy the court that, should the individual be extradited, there is no real risk of him being subjected to inhuman or degrading treatment, then the court will order his surrender. Where it is not satisfied, generally, the individual will still not be discharged: the execution of the EAW and extradition will be postponed until the requesting state is able to satisfy the court that the risk can be discounted by, e.g., providing further information, including further assurances.
>
> (x) However, where the risk is not (or, prospectively, cannot) be discounted within a reasonable time, then the court may be bound to discharge."

12. In *Zabolotnyi v The Mateszalka District Court, Hungary* [2021] UKSC 14; [2021] 1 WLR 2569, the Supreme Court summarised the approach to be taken to assurances proffered by a receiving state. Lord Lloyd-Jones JSC gave the lead judgment. Referring to previous authority, in particular *Othman v UK* [2012] 55 EHRR 1 in the ECtHR, Lord Lloyd-Jones explained that the Court should first assess the quality of the assurances given and then consider whether, in light of the receiving state's practices, they can be relied on. In *Othman*, at para 189, 11 relevant factors were identified and these are well familiar. In the context of the present case, the factors which are particularly relevant are:

> "(7) the length and strength of bilateral relations between the sending and receiving states, including the state's record in abiding by similar assurances"; (8) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers"; (9) whether there is an effective system of protection against torture in the receiving

> state, including whether it is willing to co-operate with international monitoring mechanisms (including international human-rights NGOs) and whether it is willing to investigate allegations of torture and to punish those responsible"; [and] (11) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State."

13. At para 46 of his judgment Lord Lloyd-Jones expanded on the issue of reliability of assurances:

> "… In deciding whether an assurance can be relied upon, evidence of past compliance or non-compliance with an earlier assurance will obviously be relevant. A state's failure to fulfil assurances in the past may be a powerful reason to disbelieve that they will be fulfilled in the future. (*Jane* per Hickinbottom LJ at para 55; *Georgiev* at para 61). The weight to be attached to a previous breach of assurance would be likely to vary from case to case depending on all the circumstances, including how specific the previous assurance was and whether the breach was deliberate or inadvertent (see, for example, *Klenovski v Hungarian Judicial Authority* [2017] EWHC 2560 (Admin), paras 21-22 per Bean LJ). The breach would, however, clearly be relevant (see *GS*, per Burnett LJ at para 32). In the same way, the absence of evidence that a state has ever acted in breach or in disregard of an assurance of this nature would be relevant (*Duarte v The Comarca De Lisboa (A Portuguese Judicial Authority)* [2018] EWHC 2995 (Admin), para 44 per Holroyde LJ)."

14. We do not interpret *Zabolotnyi* as taking issue with any aspect of para 8 of Hickinbottom LJ's judgment in *Georgiev*.

The Appeal to this Court

15. Our powers are set out in section 104 of the 2003 Act. Neither party submitted that we should consider exercising the power under section 104(1)(b) to remit the case to the District Judge to decide further questions. We may only allow an appeal if we were to conclude that the District Judge ought to have decided a question at the extradition hearing differently and, had that question been determined in the correct way, she would have been required to order discharge (see section 104(3)). In *Polish Judicial Authorities v Celinski and others* [2025] EWHC 1274 (Admin); [2016] 1 WLR 551, this Court (Lord Thomas CJ, Ryder LJ and Ouseley J) explained:

> "24. The single question therefore for the appellate court is whether or not the district judge made the wrong decision. It is only if the court concludes that the decision was wrong, applying what Lord Neuberger said, as set out above, that the appeal can be allowed. Findings of fact, especially if evidence has been heard, must ordinarily be respected. In answering the question whether the district judge, in the light of those findings of fact, was wrong to decide that extradition was or was not

> proportionate, the focus must be on the outcome, that is on the decision itself. Although the district judge's reasons for the proportionality decision must be considered with care, errors and omissions do not of themselves necessarily show that the decision on proportionality itself was wrong."

16. In the present case both parties rely on material that was not before the District Judge because it post-dated her decision. Fresh evidence in extradition appeals is governed by section 104(4) of the 2003 Act as explained by this Court (Sir Anthony May P. and Silber J) in *The Szombathely City Court and others v Fenyvesi* [2009] EWHC 231 (Admin). In short (see paras 35 and 36), this Court must not rely on fresh evidence unless it is "decisive", in the sense that it had it been available below it would have led to a different outcome.

A RECENT MOLDOVAN CASE

17. In *Tabuncic and Coev v Government of Moldova* [2021] EWHC 1269 (Admin), this Court (Stuart-Smith LJ and Holgate J, as the latter then was) ordered the discharge of two requested persons whose extradition was sought by this Respondent. The material placed before the Court by the Respondent was somewhat limited. The assurances offered by the Respondent were quite general in character and covered cells in a number of Moldovan prisons, some of which had been criticised as inadequate in reports of the European Council for Protection Against Torture ("CPT"). By the time of the appeal hearing, the Respondent had withdrawn its opposition to the appeals. However, the Court decided to list the case for a full hearing. Counsel for the Respondent "was evidently hampered by the lack of admissible information or even instructions that would enable her to discharge the obligation of showing that the serious risk of breach of Article 3 would be averted" (para 38).

18. In *Tabuncic and Coev*, a district judge had concluded that the Respondent's assurances were sufficient to discharge the legal burden. This Court considered that the district judge had "underplayed the risk of inter-prisoner violence and overstated the ability of the Respondent to cope with it in a way that would avoid infringement of the Appellants' Article 3 Human Rights" (para 26). There were two bases for that conclusion. First, there was cogent evidence from the CPT in a report published in September 2020 following a periodic visit. We set out paras 48-50 of the CPT's conclusions:

> "48. The problem of inter-prisoner violence and intimidation in Moldovan prisons has long been a source of serious concern for the CPT. In the report on its 2018 ad hoc visit, the Committee called upon the Moldovan authorities to take determined action to address this problem, in particular by taking effective measures to tackle the related phenomenon of an informal prison hierarchy.
>
> The findings of the CPT's delegation during the 2020 visit showed that the problem of inter-prisoner intimidation and violence among the adult male inmate population remained as

> acute as ever and was, as in the past, largely linked to the well-established informal hierarchies in the country's prison system.
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> 49. According to medical files examined by the delegation at Cahul, Chișinău and Taraclia prisons, inmates were regularly found with injuries indicative of inter-prisoner violence, such as haematomas around the eyes and, albeit to a lesser extent, with more serious injuries (e.g. a broken arm). As had been the case in the past, practically all the cases of inter-prisoner violence remained unreported, due to the climate of fear and intimidation created within the establishments by inmates who were at the top of the informal prison hierarchy, as well as a general lack of trust in the staff's ability to guarantee prisoner safety. Unsurprisingly, many of the prisoners met by the delegation were very reluctant to speak about the circumstances in which they had sustained their injuries, and some were visibly scared. On a few occasions, the delegation was followed by prisoners who tried to put pressure on other inmates in order to prevent them from talking freely with the delegation. Nevertheless, a number of inmates in each of the prisons visited did provide accounts of beatings, threats of violence and extortion by other inmates, as well as sexual assault. At Chișinău Prison, the delegation heard an allegation that a sex offender had been deliberately placed in a cell with prisoners known for violence toward sex offenders (so called "press-khata"). The prisoner concerned claimed that he had been severely beaten and raped by his cellmates, apparently as a punishment for his sex offender profile. However, the prisoner did not submit a complaint due to fear of retaliation.
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> 50. Despite the vehement denials of the Moldovan authorities in their responses to the CPT's previous visit reports, it was again clear that there was tacit collaboration between the management of the prisons visited and the informal prisoner hierarchies as regards maintaining order among inmates and ensuring the "smooth operation" of the establishments. Most strikingly, the informal hierarchy had a say in the initial "classification" and placement in cells of newly admitted prisoners, as well as in a decision as to which prisoners were to be permitted to work. This helped the informal leaders to constantly enrol "unexperienced" prisoners into the informal community of inmates, offering protection and other support in exchange for their money and loyalty. This arrangement also meant that informal leaders were free to use intimidation and a "reasonable" level of violence against those who refused to contribute to an illegal collective fund ("obshchak") managed by the informal hierarchy's leader."

19. At para 52 of its report, the CPT noted that the use of solitary confinement for victims of inter-prisoner violence under Article 206 of the Enforcement Code was for many a form of self-imposed segregation "which usually entailed an impoverished regime for

prolonged periods (in some cases for years on end) – … the only way to escape potential aggressors".

20. At para 57 of its report, the CPT said this:

> "In the CPT's view, the continuing failure of Moldovan authorities to ensure a safe and secure environment for prisoners is directly linked to a number of factors, notably the chronic shortage of custodial staff, reliance on informal prisoner leaders to keep control over the inmate population and the existence of large-capacity dormitories. At the same time, there is no proper risk and needs assessment of prisoners upon admission, nor a classification of inmates to identify in which prison, block or cell prisoners should be placed. The increased vulnerability of some prisoners (such as sex offenders, persons with mental health issues or drug dependencies) clearly calls for the need to identify potential risks and vulnerabilities in order to prevent these prisoners from being subject to violence and exploitation by other inmates."

21. In *Tabuncic and Coev*, this Court also had before it the Respondent's response to the CPT's report. Its assessment was that there had been "an almost total failure to get to grips with the problem of inter-prisoner violence" (para 29).

22. The second basis for this Court's decision was that there was clear evidence that the Respondent had breached its assurance in relation to a Mr Simionescu that he would be held in one of two cells at Chișinău no 13 prison ("Chișinău 13"). The explanation that the Court was given was that Mr Simionescu had been moved from cell 93 at his own request because he did not feel safe there.

23. This Court concluded as follows:

> "39. We have fully taken into account the difficulties under which Ms Malcolm was labouring. However, even giving due allowance for those difficulties, the information before us satisfies us that the decision of the court below cannot stand. In relation to inter-prisoner violence, the terms of the CPT Report and the Respondent's limited response to it tip the balance firmly in favour of the Appellants. The balance tilts yet further once the information about Mr Simionescu is taken into account. It is of particular concern that in his case (a) he was fearful of violence in cell 93 at Chișinău and (b) contrary to the assurances given to him and to the Appellants, it was not the perpetrators who were moved, but Mr Simionescu who was moved from the approved cell. The fact that he may have been moved at his own request only heightens the doubts that must surround the assurances, which were predicated on the two specified cells being places of safety for the victim so that it would be the perpetrators of violence or other conduct giving rise to fear who would be moved if segregation were required. In our judgment, this lends additional strength to the concern noted by the CPT that solitary

> confinement for victims of inter-prisoner violence is a form of self-imposed segregation which is seen as a means of escape from aggressors leading to an impoverished regime for prolonged periods.
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> …
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> 43. We do not wish to add to the Respondent's difficulties in any way, and we bear in mind the difficulties of which we have been informed by Ms Malcolm; but we feel obliged to point out that the main substance of the allegations and arguments upon which these appeals were brought has been known for months, as have the contents of the CPT Report. The system of extradition as applied by the Courts of this jurisdiction is founded upon mutual trust and respect. The failure of the Respondent to provide any admissible information in reply to the matters raised by the Appellants is a matter of real concern. While these appeals have not been set up to be test or lead cases in relation to Moldova, the fact that they are, so far as is known, the first to have reached the higher courts means that assurances given and assertions made by the Respondent in future cases will have to be scrutinised with particularly anxious care."

THE EVIDENCE BEFORE THE DISTRICT JUDGE

Assurances Provided by the Respondent

24. In the course of the proceedings below, the Respondent provided assurances in respect of each Appellant. The assurances identified that if extradited that they would be detained in Chișinău 13 and Leova Prison no 3 ("Leova 3"). In relation to the two Appellants with conviction warrants, the assurances provided that they would be held for an initial period of up to 25 days at Chișinău 13 in cells earmarked for extraditees and then transferred to Leova. Mr Lungu, on the other hand, would be held at Chișinău 13 pending his trial for "a short time". After the hearing before the District Judge, that was clarified in a subsequent assurance to mean: up to 12 months, albeit that period could be significantly shorter, potentially fewer than 30 days.

25. The assurances provided that at Leova 3 the Appellants would be detained in Block 4, which was a new detention block for extradited persons. Our understanding of the relevant assurance is that the new procedures were put in place following an order of the National Penitentiary Administration of Penitentiaries ("NAP") given in December 2021. The assurances specified 13 cells designated for individual occupation and 41 cells designated for occupation by 2-4 persons. The Appellants would be detained separately from other prisoners and may have contact with them only if that did not endanger their security and integrity. The Respondent also undertook to ensure personal security pursuant to Article 206 of the Enforcement Code ("Article 206") and that the Appellants would be detained in areas free from criminal sub-culture.

26. Mr Evans provided us with a helpful summary of the Respondent's various assurances in his skeleton argument. As Mr George Tugushi, the Appellants' expert witness, made clear in his evidence (as to which, see below), material conditions (e.g. areas of personal space) in both of the institutions the subject of the assurances do not raise an issue under Article 3. In our judgment, we should be concentrating on the issues of inter-prisoner violence and the poverty of the prison regime brought about by the need to keep inmates in closed conditions for up to 23 hours a day. Our agenda has been created not merely by our analysis of the parties' submissions, identifying what is truly in issue between them, but by the concerns expressed by this Court in *Tabuncic and Coev*.

27. The Respondent also provided the District Judge with a letter from the Ministry of Justice dated 21 April 2021. This was the day after the hearing in *Tabuncic and Coev* but three weeks before the handing down of judgment. We have not been told when the letter was translated, but we see the force of the criticism that the Divisional Court should have been informed of its contents (albeit it could have made no possible difference to the outcome, which had already been announced). It appears that neither the Ministry of Justice nor the NAP was notified of Mr Simionescu's extradition from the UK, and consequently Chișinău prison was not informed. Although after the mandatory period of quarantine Mr Simionescu was held in cell 93 (one of the cells within the assurance) he was moved elsewhere at his own request "because he felt in danger". Thereafter, he was detained in two cells which fell outside the scope of the assurance. As a result of these breaches:

> "… the NAP took the necessary steps to reorganise internally the process of monitoring the assurances and will make sure that they will not be any breach of the prison assurances given in the future."

The 2023 CPT Report and the Respondent's Response

28. The CPT carried out an *ad hoc* visit to three Moldovan prisons in December 2022 and reported on their findings in September 2023. Chișinău 13 was one of the three prisons visited; we are not concerned with the other two. Importantly, Leova prison was not considered, nor was the position of extradited prisoners subject to assurances specifically addressed. The CPT noted that the co-operation of the Moldovan authorities was excellent but that "the principle of co-operation is not limited to facilitating the work of a visiting delegation but also requires that decisive action is taken to ensure that recommendations made by the Committee are effectively implemented in practice". By way of summary, the 2023 CPT Report said:

> "As mentioned above, the findings of the visit showed that the problem of inter-prisoner violence remains largely unaddressed and prisons still generally fail to ensure a safe environment for incarcerated persons. Once again, a high number of persons held in prison described to the delegation the overall atmosphere of intimidation and violence created by the informal prison leaders and their close circles. The documentation examined by the delegation again registered numerous cases of persons held in prison who were found with injuries indicative of inter-prisoner violence. Due to the atmosphere of fear and the lack of trust in the staff's ability to guarantee safety, persons found by staff with

> injuries refused to provide a plausible explanation as to the origin of their injuries. Moreover, although all cases of inmates bearing injuries were registered and reported to the prosecutor's office, in none of the cases was an investigation initiated.
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> …
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> Many persons held in the prisons visited perceived segregation from the general prison population pursuant to Section 206 of the Enforcement Code as the only way to escape the threats posed by the informal prisoner hierarchy. However, for a number of reasons explained in the report, this measure, as implemented at the time of the visit, cannot be regarded as an efficient solution. In particular, segregated prisoners were held in former disciplinary isolators which provided poor material conditions, and were subjected to impoverished regimes.
>
> The CPT considers that the continuing failure of the Moldovan authorities to ensure a safe and secure environment for persons held in prison is directly linked to a number of factors, most notably the chronic shortage of custodial staff, reliance on informal prisoner leaders to keep control over the inmate population and the existence of large-capacity dormitories. At the same time, there is no proper risk and needs assessment of persons upon their admission to prison, nor a classification of persons to identify in which prison, block or cell they should be placed.
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> …
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> As was already stated in the reports on the 2015, 2018 and 2020 visits, with reference to Article 3 of the Convention, the CPT once again calls upon the Moldovan authorities to take decisive action to address the long-standing recommendations made by the Committee. Continuing failure of the authorities to take effective steps to improve the situation in prisons, in particular as regards the phenomenon of informal prisoner hierarchy and the resulting inter-prisoner violence and intimidation, will oblige the Committee consider having recourse to Article 10, paragraph 2, of the Convention." [emphasis in original]

29. Counsel for the Appellants drew our attention during the course of the hearing to various passages in the 2023 report. It is unnecessary to refer expressly to all the passages. We note in particular the following:

(1) There was an incident in Chișinău prison on 16 November 2022 when a prisoner allegedly fell off his bunk-bed and died of a head injury. Other persons in the same cell claimed that they had not seen anything. The CPT said it would like to receive information on the outcome of the forensic medical examination which followed the autopsy.

(2) At Chișinău 13 sex offenders were not grouped together but accommodated one or two per cell, in amongst the general population and regardless of their particular vulnerability.

(3) There were "lamentable" staff shortages at Chișinău 13 with prison officers having to do 24-hour shifts. Consequently, "it … continued to be the case that staff were not in a position to have effective control over the situation in the establishments visited and could neither be aware of, nor effectively intervene in instances of inter-prisoner violence".

(4) The CPT was critical of the overall regime at Chișinău 13. The vast majority of prisoners were locked up in their cells for up to 23 hours a day, without being offered any out-of-cell activities "apart from one or, at best, two hours of daily outdoor exercise, taken in small and dilapidated yards".

30. There are two aspects of the Respondent's response to the 2023 CPT report to which we should draw attention. First, as for the incident that took place on 16 November 2022, it was determined that there was insufficient evidence to start a criminal investigation. The deceased's fellow inmates stated that the dead man had no conflicts with the prison administration or fellow inmates, and that on the night in question "he was sick, he felt bad" and they were awoken by the noise of his having fallen from his bunk bed. We think that we are entitled to be sceptical about that, although we do not doubt that a criminal investigation would have been thwarted by a wall of silence. Secondly, in relation to the entrenched issue of inter-prisoner violence, the Respondent stated that it was developing a strategic document to address the issue, but the likely timescale was three to five years. The Ministry of Justice was developing "a progressive system of punishment execution" within a shorter timeframe, but in terms of the position overall "to address the problem specific to penitentiaries, a programme cannot be developed, since it is not foreseen or indicated in any strategy".

The Evidence of Mr George Tugushi

31. Mr George Tugushi provided a number of reports which were before the District Judge and gave oral evidence remotely. He has been a member of the CPT since 2005 and has a distinguished *cv*. Mr Evans did not seek to impugn his credibility or reliability as an expert witness. His reports are extremely thorough and appear to us to be balanced.

32. Mr Tugushi visited Chișinău 13 and Leova 3 in March 2023. He was able to interview a number of inmates in prison and was given full access to the areas he wished to inspect. Mr Tugushi's reports contain lengthy recitations of previous CPT reporting which we need not set out. We focus on his specific findings in relation to Leova 3 and then Chișinău 13.

33. Block 4 at Leova 3 is a block with a closed regime and a capacity of 124 places. On the day of Mr Tugushi's visit, there were 90 prisoners in this block – how many were extradited prisoners subject to assurances is not stated. Out of the 90, there were 15 prisoners who had requested isolation under Article 206. There were 39 staff members with custodial duties in all four blocks, and nine vacancies. Although there were numerous allegations of inter-prisoner violence generally, "such practices are not present in Block 4: it served as a shelter for the prisoners escaping violence and extortion in the other parts of the same prison". Living conditions in this renovated

block were "overall acceptable", although in terms of the quality of the regime prisoners were in the main locked in their cells, with a limited period of daily outdoor exercise lasting 1-2 hours. Inmates held in Block 4 claimed that they all had serious problems with informal leaders of the hierarchy in the general accommodation of the prison outside the confines of this block. As Mr Tugushi explained:

> "The only solution was isolation in Block 4. It was not secure to go the medical unit as the proxies of informal leaders could approach anyone there."

Further:

> "As mentioned above, only 15 prisoners were formally under the protection of Article 206 of the EC. However, most of the prisoners held in the block were *de facto* Article 206 prisoners, isolated from the mainstream prison population due to their fear of violence, exploitation (including sexual exploitation) and extortion."

34. As for Chișinău 13, Mr Tugushi explained that it operates primarily as a remand facility. At the time of his visit, the prison had an official capacity of 570 places although there were 804 inmates in occupation. 118 prisoners had sought Article 206 protection. The prison had 98 posts for custodial staff, and of these 35 posts remained vacant. The Deputy Prison Director admitted that this placed "unbearable pressure" on the remaining personnel. Mr Tugushi visited the cells the subject of the assurances, and our understanding of his evidence is that, although some of these were somewhat dilapidated, the Article 3 threshold in terms of their purely physical aspect was nowhere near met. The majority of prisoners were held in their cells for up to 23 hours a day, with one or, at best, two hours of daily outdoor exercise taken in small yards.

35. In an addendum report dated 8 November 2023, Mr Tugushi addressed further information supplied by the Respondent to the effect that prisoners placed in Block 4 under Article 206 can enjoy outdoor activities "up to six hours a day in accordance with the mobile daily schedule determined by the administration of the prison". Mr Tugushi's comment was that "it is rather unrealistic that prisoners from Block 4 can stay 6 hours outdoors".

36. At the hearing before the District Judge, Mr Tugushi was cross-examined by Mr Evans. He agreed that the CPT had visited Chișinău prison and did not refer to Article 206 segregation being "interfered with" by the informal hierarchy. The CPT also noted that most prisoners spoken to were under Article 206 and "felt relatively safe because they were not in touch with the hierarchy". He said that Chișinău 13 is a remand prison and "there was not a problem there". When Mr Tugushi spoke to inmates at Chișinău 13 "they did not say anything extraordinary to put in his report". Further:

> "Those in segregation will have one hour's exercise but conditions in the exercise yards were in a poor condition because the building was very old. There was hardly any staff in the prisons to allow prisoners daily contact and they go to the exercise yard with their cell mate. Segregated prisoners have

> contact with their cell mate but not with others, which is the same in Leova prison."

37. Mr Tugushi also confirmed in cross-examination that he did not report any instances of inter-prisoner violence and there was no evidence of a prisoner hierarchy in Block 4.

38. There was also evidence before the District Judge that 50 individuals had been extradited from Council of Europe States in the previous three years.

THE JUDGMENTS UNDER APPEAL

39. On 2 February 2024 the District Judge handed down judgments in the individual cases of Mr Ciorici and Mr Codreanu and what she called "Annex A – Judgment re Prison Conditions – Section 87, Article 3".

40. Paras 118 and 124 of the first version of what may be characterised as her generic judgment on the Article 3 issue stated as follows:

> "118. The assurance provide clear and cogent evidence that dispel the risk of an Article 3 breach in respect of both general conditions and inter-prisoner violence for the maximum of 25 days [the Appellants] will spend in Chișinău and thereafter in Leova to spend their sentences. However, Mr Lungu could spend up to 1 year in Chișinău and I require a further assurance from the Government to specify how long he will spend there given Mr Tugushi's evidence that he will be more at risk of inter-prisoner violence than in Leova.
>
> 124. Accordingly, I reject the challenge by [the other Appellants] but I do require further information in respect of how long Mr Lungu, as an accused person, will spend in Chișinău. As Already I have accepted Mr Tugushi's evidence that he could be there for up to a year and the assurance is not specific, saying it will be for a "short time". What does that mean? I respectfully ask the Government of Moldova to specify how long Mr Lungu will spend in Chișinău 13."

41. On 3 April 2024 the Respondent provided a further assurance which merely set out the position under Moldovan law. It was declared that Mr Lungu would not be held for more than 12 months at Chișinău. On 5 April the Respondent went slightly further and stated that the period of incarceration at Chișinău would depend on the length of the period of criminal investigation and trial. It could be significantly shorter than 12 months, "maybe even 30 days or less".

42. On 26 April the District Judge reissued her generic judgment on the Article 3 issue as well as a judgment tailored to Mr Lungu's case. Paras 118 and 124 (now renumbered 128) now provided as follows:

> "118. Having considered all the evidence I do not find that the requested persons have shown that in relation to both prisons where they will be placed that there are substantial grounds for believing that they face a real risk of either being subjected to torture or to inhuman or degrading treatment.
>
> …
>
> 128. I have already found the assurances can be relied on and I am satisfied that the further information that states Mr Lungu may be detained in Chișinău 13 for a shorter period of 12 months satisfies me that I can rely on the assurance given in his case."

43. The changes to para 118 were unfortunate. Not merely has the District Judge reversed the burden of proof, she has removed reference to her concerns about Mr Lungu being held in Chișinău for up to 12 months. No doubt she was hoping in February 2024 that the Respondent would give some sort of guarantee along the lines that Mr Lungu would be held in Chișinău for a specified period of significantly less than 12 months. However, the possibility entertained in the assurances that the period of incarceration on remand might be *less than* 12 months, and even as short as 30 days or less, could not logically remove the possibility that the relevant period might be *as long as* 12 months. Thus, although the Respondent has in reality stuck to its metaphorical guns, the District Judge concluded that the April 2024 assurance altered the position. We will need to consider where this leaves Mr Lungu's appeal.

44. The District Judge applied the correct burden of proof to the cases of Mr Ciorici and Mr Codreanu, and Mr Josse did not submit otherwise. By the time she made her changes to para 118, their cases had already been sent to the Secretary of State, and she was *functus*.

45. Turning now to the District Judge's analysis of the generic issue, we consider that she set out the evidence fairly and comprehensively and, save in the respect just identified, correctly directed herself as to the governing legal principles. The first question she addressed was whether the assurances, putting aside for subsequent consideration the issue of whether they could be relied on and/or enforced, enabled her to conclude that the burden of proof imposed on the Respondent had been discharged. Her key findings were as follows:

> "113. At Chișinău 13 they will only be detained in specified cells alone or with others if it does not compromise their safety. The cells have been renovated … The CPT report is critical of general conditions but did not see the specific cells the RP will be allocated to. However, Mr Tugushi did and he said they were adequate and had been guaranteed for extraditees. …
>
> 114. Details have been given about staffing levels, recruitment policy and how prisoner violence can be reported and dealt with by staff in Chișinău. Protection under Article 206 is available. Mr Tugushi met some prisoners who were under Article 206 protection, and they felt safe. This is important for Mr Codreanu

> because of his conviction, that he will have an effective measure of protection in Chișinău.
>
> 115. Once convicted, the RP's will move to the newly renovated Block 4 at Leova prison. Mr Tugushi's evidence was that the conditions were "overall acceptable and did not call for any additional comments". It was not full. Inmates were out of their cells for 1-2 hours a day and I agree with him that the Government's response to them being out six hours a day may not be realistic, 1-2 hours a day is guaranteed. He said being in Block 4 could amount to a breach of Article 3 because conditions were akin to solitary confinement, but he had to accept that this was not a disciplinary measure and inmates could talk to one another on the block. There were concerns about going to other areas of the prison, for example accessing health facilities, but the assurances clearly set out the protection inmates will receive to be able to move through the main prison.
>
> …
>
> 117.It appears to me that in relation to inter-prisoner violence, all those placed in Block 4 is [sic] safe. All the extraditees will go to this block including Mr Codreanu who will not be in the main prison population where he would be considered an "untouchable". Mr Tugushi did not find any inter-prisoner violence in this wing and no influence of the hierarchy. I do not consider the regime at Leova is one of either self-isolation or segregation but is a separate wing from the main prison population. It is not used as a disciplinary measure; inmates can speak with one another and exercise together and the assurances set out rehabilitation activities and regular visits from family and employment opportunities."

46. As for the second question, the District Judge accepted the Respondent's explanation for the farrago in relation to Mr Simionescu. She relied on the extradition of a significant number of individuals from other Council of Europe states. She concluded that cogent evidence had been provided by the Respondent that the assurances would be enforced.

FURTHER EVIDENCE

47. As is too common in extradition appeals to this Court, a mass of further evidence has been adduced by the parties. We have considered all of it *de bene esse*. In order to make the best sense of this further evidence, we will address it in chronological order.

48. On 7-8 November 2024 Mr Tugushi returned to Moldova and visited Chișinău 13 and Leova 3. According to Mr Evans' skeleton argument, his report was made available to the Respondent in other extradition proceedings involving Moldovan nationals. We have not seen that report in the form in which it was provided, but on 6 January 2025

further assurances were provided by the Respondent in response to what Mr Tugushi said. These assurances stated that requested persons will only be held at detention facilities specified in the State guarantees; that individuals are escorted to medical facilities; that certain cells are to undergo repair; and that there is no evidence of extradited individuals from other Council of Europe States having been incarcerated in prisons other than those specified in their case-specific assurances (that is our interpretation of one sentence in this group of assurances where the translation appears somewhat stilted).

49. The 6 January assurances also addressed Mr Tugushi's evidence that the Respondent had breached an assurance in relation to Mr Sergiu Barbacar. The Respondent had given an assurance to the Kingdom of the Netherlands that Mr Barbacar would be held on his arrival in Moldova only at Chișinău 13. However, he was taken instead to Balti prison no 11 because the order of a District Court in Moldova so stipulated. Once this error was detected (after approximately three months), Mr Barbacar was transferred to Chișinău 13. In order to avoid a similar error in the future:

> "… it was requested that the Ministry of Justice … initiate the creation of a mechanism of co-operation between state structures involved in the extradition process (General Inspectorate of Police, National Anticorruption centre, Prosecutor's Office of the Republic of Moldova, judges etc.), as well as training of their representatives on the issue."

50. On 14 February 2025 the Respondent provided a further sheaf of assurances. By way of summary, these stated as follows:

(1) Following the report of Mr Tugushi, certain cells have now been excluded from the scope of the assurances.

(2) In the last three years, 128 individuals from 23 Council of Europe States have been extradited to Moldova through the involvement of the Ministry of Justice (i.e. these were conviction cases), 26 of whom had the benefit of assurances. Over the same period, 55 individuals have been extradited to Moldova through the involvement of the General Prosecutor's Office (i.e. these were accusation cases), 14 of whom had the benefit of assurances. The Respondent has received no complaints of any breaches in any of these cases.

(3) In relation to Mr Simionescu, the competent authority for submitting the extradition request to the UK was the General Prosecutor's Office and not the Ministry of Justice, because the case involved an accusation warrant. The former was informed by the Ministry of Foreign Affairs and European Integration in Moldova that Mr Simionescu had consented to his extradition. The General Prosecutor's Office interpreted that as meaning that he had consented to the "unconditioned simplified extradition procedure", and that the guarantees given by the same office were no longer germane. In line with standard practice in such circumstances, the General Prosecutor's Office did not consider it necessary to inform the Ministry of Justice of Mr Simionescu's extradition.

(4) Both the NAP and the General Prosecutor's Office have modified their procedures to ensure that State guarantees are honoured in the future.

51. The Appellants rely on a recent report by Mr Tugushi dated 5 March 2025. We understand that this is a consolidated report which incorporates earlier documents. Very sensibly, Mr Evans did not object to our considering it. In the "summary remarks" at the start of his report, Mr Tugushi addressed what had changed since his previous report. He pointed out that, whilst Block 4 is not controlled by the internal hierarchy, conflicts and clashes in the entire block occur frequently. Block 4 is now full and extradited prisoners have been kept on the ground floor, not mixed with the remainder. Mr Tugushi suggests that mixing extradited people with inmates on the upper floor "might not work in practice", and that extra places will have to be made available on the ground floor, causing obvious difficulties. However:

> "Since my last visit, the situation has somewhat improved [in relation to the prison regime], as prisoners from Block 4 were able to spend more time outdoors (up to 4 hours) and more prisoners, including extradited ones, had the possibility to attend some programmes and even attend seasonal works outside the prison in the vineyard. During the outdoor exercise time cell-doors in the corridors remained open and prisoners could move freely around the building in their respective floor."

52. Turning now to the narrative section of his report, when Mr Tugushi visited Leova 3 in November 2024, there were 117 prisoners housed in Block 4 – seven short of full capacity. Mr Tugushi was told that all 19 prisoners extradited from abroad with assurances were held on the ground floor of Block 4. These men had been extradited from Italy, Hungary, Norway and the Netherlands. All prisoners with assurances were held on the same corridor and they were not mixed with prisoners on the upper floors. They would go out for exercise in the designated yard, separated with a wall from the second yard which is used by other prisoners. As for the staffing situation, out of the 145 positions that were required to be filled, 15 remained vacant including several guard posts.

53. Mr Tugushi examined the trauma register kept in the medical unit of the prison. In 2024 there were 99 documented cases although Mr Tugushi was told by a medical assistant that the real figure was higher. Of the 99 cases, 54 were reported from Block 4 including 30 cases of self-harm, some of which were serious. Of these 54 cases, seven involved prisoners with assurances. Mr Tugushi added this:

> "151. The interviewed prisoners confirmed that conflicts and clashes occurred due to different reasons. One of the extradited prisoners, who was registered in the trauma logbook, told me that the incident occurred on his way to the medical unit, after he left the permitter of Block 4. It was obvious that prisoners held in Block 4 were not appreciated by the prisoners housed in other units of the prisons. I was told that internal prison hierarchy was trying to get control of Block 4. However, their attempts have not proved to be fully successful.
>
> 152. It is also worth noting that in Block 4, just one guard was assigned per floor. Guards worked in 24-hour shifts, which is in no way conducive to their effectiveness."

54. Mr Tugushi has also provided an update in relation to Chișinău 13. On the day of his visit, the prison was overcrowded but slightly less so than before. A number of cells were no longer suitable and have been excluded from account. The trauma register contained 349 cases for 2024, a figure which is likely to represent a significant understatement of the truth. As before, persons segregated under Article 206 were held together in various cells.

THE PARTIES' SUBMISSIONS

The Appellants' Case

55. Mr Josse submitted that the headline message in the 2023 CPT report was not properly considered by the District Judge, and that none of the post-decision material altered the position in the Respondent's favour. That message was, and is, that the Respondent is responsible for a systemic and persistent failure to provide a safe and secure environment for prisoners, and that the root causes of this problem have not been addressed. Those include: a chronic shortage of custodial staff; a tacit reliance on an informal hierarchy with its leaders maintaining control; and the existence of large dormitories. Mr Josse submitted that the assurances given by the Respondent fail to address these deep-seated problems in the two prisons under consideration, and that they are in any event unreliable.

56. Mr Josse submitted that Article 206 provided insufficient protection from the informal hierarchy and:

> "[i]n any event, it is wrong in principle that a person liable to detention in conditions that are not compatible with Article 3, should be required to make a positive election in respect of their status, which they might be deterred from making by reason of those self-same risks. It is incumbent on a Requesting State to provide Article 3 compliant conditions without requiring an individual to take any further step that might prejudice their safety or which they might reasonably consider would prejudice their safety." (see para 66 of the Appellant's skeleton argument)

57. In relation to Mr Lungu's case, Mr Josse submitted that the District Judge's revised judgment is inexplicable and cannot stand. The premise of her February 2024 judgment was that Mr Lungu would face an unacceptable risk of Article 3 ill-treatment if he were held there for as long as 12 months. In answer to a question from the Court, Mr Josse made it clear that his case in relation to all three Appellants was that being held at Chișinău for up to 25 days would amount to a violation of Article 3. His argument was that 25 days is not a *de minimis* period, that extradited prisoners are not placed in a self-contained area (c.f. Leova), and that inter-prisoner violence remains a problem. Mr Lungu's case is, therefore, *a fortiori* the other Appellants' rather than free-standing.

58. As for the reliability of the assurances, Mr Josse took us through the *Othman* factors to which we have already referred. In particular, there is no significant history of bilateral relations which might favour extradition: indeed, there has only been one person extradited to Moldova in recent years, and in his case the assurance was breached; there

is no satisfactory evidence of monitoring of the assurances; and in relation to the two instances of violation, the evidence has come out adventitiously rather than in consequence of any proactive system imposed by the Respondent.

59. Mr Josse submitted that the Respondent has given inconsistent and contradictory explanations in relation to Mr Simionescu, and that the situation in respect of Mr Barbacar could only be fairly described as, at best, a muddle.

60. In his reply, Mr Josse sought to defuse the Respondent's reliance on the point that many Council of Europe States are extraditing Moldovan nationals to that country. He submitted that there is a paucity of evidence as to the circumstances in which that process is occurring.

61. In his submissions, Mr Caldwell developed the generic issue of chronic staff shortages. He reminded us that in Block 4 at Leova 3 there was only one guard per floor (responsible on our arithmetic for approximately 40 prisoners on the premise of full capacity). He submitted that if a prisoner needed to be escorted to the medical block for his own protection, that would necessarily remove the person carrying out standard guard duties. Mr Caldwell submitted that the District Judge relied overly, and erroneously, on the absence of complaints from prisoners on Article 206 and the statements elicited from Mr Tugushi that prisoners "felt safe". The District Judge should have applied an objective test.

62. Ms Grudzinska advanced a series of helpful submissions directed to the particular circumstances of Mr Codreanu. She submitted that although Mr Codreanu would need to invoke Article 206, the District Judge understated the risks that would remain in his case. In relation to Chișinău 13, Mr Codreanu would not be separated physically from the general prison population. She reminded us of the evidence that prisoners with injuries often refuse a medical examination. She submitted that the Respondent's system was reactive and not proactive. Her contention was that Mr Codreanu would face a real risk of Article 3 ill-treatment over a period which could last up to 25 days.

63. As for Leova 3, Ms Grudzinska made two overarching points. First, she submitted that he would be held in an environment which has been described as "impoverished" for many years. Secondly, she submitted that block 4 is not properly supervised. If "outed", Mr Codreanu would have nowhere else to go.

64. Mr Henley advanced a number of disparate arguments. He submitted that the prosecutor's office does not act on referrals. He submitted that CPT recommendations over the years have not been followed. He contended that the statistical evidence in relation to inter-prisoner violence shows no amelioration over the years and in any event significantly understates the true extent of the problem.

The Respondent's Case

65. Mr Evans submitted that the District Judge was correct to conclude both that the assurances were adequate and that they can be relied on. He contended that, in contrast to the position in *Tabuncic and Coev*, the assurances here are highly detailed.

66. Mr Evans submitted that it is clear that the Respondent is taking its obligations seriously, that it is fully engaging both with the CPT and the Crown Prosecution Service

in relation to these extradition requests, and that it has been full and frank throughout. Furthermore, the Respondent has taken specific steps on the ground to address the problems, in particular by creating a dedicated area in Leova 3 to house extradited persons.

67. Mr Evans submitted that it is relevant that 183 individuals have been extradited to Moldova from Council of Europe States over the past three years, and it is also relevant that there is no evidence (beyond the two cases which we have already discussed) that assurances have been violated.

68. Mr Evans contended that the District Judge's approach was thorough and legally accurate. She properly addressed the adequacy of protection issue in both institutions and was entitled to place reliance on what inmates told Mr Tugushi: that they "felt safe". The recent report from Mr Tugushi does not alter the position. As for Leova 3, Mr Evans submitted that the District Judge was correct to state that prisoners were not being held in isolation or for a disciplinary reason. The evidence regarding the number of injuries sustained is incomplete inasmuch as the available data does not include information as to the nature of the injuries or their causes. As regards transit to the medical unit at the prison, Mr Evans drew our attention to the Respondent's evidence that individuals would be under the permanent supervision of a penitentiary employee.

69. As for Chișinău 13, Mr Evans pointed out that Mr Codreanu and Mr Ciorici would be held under Article 206 for a relatively short period, during which they would have contact with others in the cell, staff and medical professionals. That would not amount to solitary confinement. Mr Evans added that there is no evidence that sex offenders under Article 206 conditions have been subjected to ill-treatment. As for Mr Lungu, Mr Evans adhered to the submission he made in the court below, which submission it seems that the District Judge finally accepted, that being held at Chișinău 13 would not amount to a breach of Article 3. The risk of ill-treatment from other prisoners did not attain the relevant threshold.

70. Mr Evans submitted that the Appellants' arguments about the inadequacy of custodial staff do not impact on the adequacy of the assurances provided. Mr Tugushi's evidence was that prisoners felt safe in the existing regime.

71. Finally, as for the reliability of the assurances given, Mr Evans submitted that the Respondent has given full, frank and consistent explanations in both cases. Further, there is an adequate system of monitoring at both the national and the international level.

DISCUSSION AND CONCLUSIONS ON ARTICLE 3

72. Although she did not address the entirety of the relevant evidence in the concluding section of her judgment, we do consider that the District Judge carried out a detailed and careful analysis of this case. She did so against the backdrop of there having been no extraditions to Moldova since 2020, and the Divisional Court having expressed itself in particularly trenchant terms in *Tabuncic and Coev*.

73. We are not surprised by any of the language the Divisional Court used on that occasion. The Court had received little or no assistance from the Respondent. The 2020 CPT report had concluded that the Respondent had done little or nothing to address the endemic problem of inter-prisoner violence. On the evidence available to the Court, the Article 206 regime was unsatisfactory and "impoverished". The assurances given by the Respondent were of little assistance. The breach in relation to Mr Simionescu appeared egregious and was unexplained. Accordingly, subsequent constitutions of this Court were urged to scrutinise the Respondent's assurances with particularly anxious care. We have done precisely that.

74. We think that the position has improved considerably since 2021, at least as regards the designated areas in the two prisons presently under consideration. We have little doubt that if the ambit of scrutiny were extended to the Moldovan prison estate as a whole, numerous Article 3 breaches would be identified. The 2023 CPT report makes that clear. This factor leads us to place less weight than Mr Evans urged us to put on the fact that 23 Council of Europe States are extraditing Moldovan nationals to that country. Many are doing so without requiring any assurances. We have received no evidence about extradition procedures in other Council of Europe States. However, it is relevant that many States do now extradite Moldovan nationals having obtained assurances, and it is also relevant that, putting aside the cases of Messrs Simionescu and Barbacar, there have been no other reported instances of breach.

75. Many of the Appellants' submissions failed to differentiate sufficiently between the overall position in Moldova and the position in the two institutions under present consideration. At times, their submissions also failed to pay sufficient regard to the risk to the Appellants from the consequences of inter-prisoner violence in light of the Respondent's assurances.

76. It is convenient to examine first of all the position at Leova 3. After December 2021, a dedicated area within Block 4 was created to hold extradited persons returning to Moldova with the benefit of assurances. In our judgment, the District Judge's overall evaluation of the evidence in relation to Block 4 was entirely reasonable. Mr Tugushi confirmed in cross-examination that there was not a problem in Block 4, that prisoners felt relatively safe there (we agree that this point should not be over-emphasised, but it is relevant), and that the insidious effects of the informal hierarchy are not felt within Block 4. This last factor is particularly important.

77. The District Judge concluded that incarceration within Block 4 is not tantamount to solitary confinement, whether self-imposed or otherwise, and we agree. Extradited prisoners held on the ground floor of Block 4 are not subject to Article 206 as such: they are detained within a specific area of the prison earmarked for them. It follows that they are not being required to make the positive election that para 66 of the Appellants' skeleton argument characterises as "wrong in principle". In any event, the closed regime to which they are subject does not in our opinion raise an issue under Article 3. There is an opportunity for interaction with inmates in the same cell as well as with prison staff. At the time the District Judge was considering the position, prisoners were let out of their cells for 1-2 hours a day. They were not being held in conditions akin to solitary confinement.

78. We accept Mr Evans' submission that the apparently low number of prison guards in Block 4 does not materially impact on the risk of inter-prisoner violence in this context.

At the time the District Judge was considering the position, she had Mr Tugushi's evidence that the risk was sufficiently low to fall below the Article 3 threshold. The informal hierarchy was outside Block 4.

79. The District Judge did not deal with the submission that the data from the medical unit needs to be interpreted against a background of significant under-reporting. On the other hand, there is little evidence either way as to how individual injuries were sustained, and we note the relatively low figure for reported injuries, however sustained, in relation to extradited prisoners – presumably with assurances, owing to their location within Block 4.

80. The District Judge did address the particular circumstances of Mr Codreanu. She concluded that he would not face an Article 3 risk in relation to Block 4. The evidence about this is somewhat exiguous and Mr Tugushi did not touch on it. If the Respondent were to follow the same practice as it adopts for sex offenders at Chișinău 13, Mr Codreanu would be held in a cell in Block 4 either on his own or with another sex offender. We appreciate that the regime he would face falls far short of the ideal, but the question for us is whether his conditions would be so "impoverished" as to amount to a violation of Article 3. We are unable to reach that conclusion. Mr Codreanu would not face an unacceptable risk from the informal hierarchy but we see some of the force of Ms Grudzinka's argument that he would be at risk from other prisoners *simpliciter*. However, what she has not demonstrated is that, with whatever Article 206 protection is necessary, such a risk might amount to a breach of his Article 3 rights.

81. For all these reasons, we cannot accept the Appellants' case that the District Judge was wrong to find that the Respondent's assurances were sufficient to ameliorate the Article 3 risk in respect of Leova 3 on the basis of the evidence that was available to her. We defer for subsequent consideration the issue of whether the assurances could be relied on.

82. As for the evidence adduced before this Court which was not available to the District Judge, the question we have to answer is whether it is "decisive" in the *Feynevesi* sense. Although the evidence was adduced with little regard to any procedural discipline, our evaluation of it cannot be based on an unprincipled, forensic free-for-all.

83. The Respondent has given further assurances in relation to Leova 13 which are directed to Mr Tugushi's post-decision report. In one respect, the position has materially improved in that prisoners are now let out of their cells for significantly longer. In another respect, Mr Tugushi points to evidence of inter-prisoner violence within Block 4 even if it is not engendered by the informal hierarchy. This in his view is the result of insufficient numbers of guards.

84. What Mr Tugushi's latest evidence does not demonstrate is that the informal hierarchy has infiltrated Block 4. We agree that the low number of staff with custodial duties may well be relevant to inter-prisoner violence generally, although that was not an issue which was raised before the District Judge, and there is nothing to suggest that the situation has deteriorated recently. The Appellants' case is tethered to the inability of the assurances to address the risk of inter-prisoner violence fomented or encouraged by the informal hierarchy. In any event, we cannot conclude on the basis of Mr Tugushi's recent evidence that what may be described as a background risk of inter-prisoner violence has reached such a point that any district judge would be driven to conclude

that the assurances are insufficient. Put another way, the further evidence is not "decisive" in the *Feynevesi* sense.

85. We also think that there is little force in Mr Caldwell's separate point that if prisoners have to be escorted from Block 4 to the medical unit, that must perforce reduce the number of staff left to control Block 4 itself. We think that submission is somewhat speculative. The Respondent's further information refers to penitentiary staff without being any more specific.

86. We move on to consider the position in relation to Chișinău 13, which is clearly more nuanced. On the one hand, prisoners extradited pursuant to conviction warrants will be held at Chișinău 13 for a relatively short period. Although a breach of *Muršić* space standards is capable of being committed after just a few days of incarceration, we think that the position becomes more one of fact and degree in the context of an issue of risk. On the other hand, the District Judge appears to have changed her mind for reasons which are not satisfactory in relation to Mr Lungu, and she compounded this apparent error by misdescribing the burden of proof.

87. It is convenient to address first of all the position of Mr Ciorici and Mr Cordreanu. Their stay at Chișinău 13 will be relatively short and the evidence before the District Judge was that they will be detained in specific cells where inmates felt relatively safe. Further, Mr Tugushi accepted in cross-examination that there had been no reference in his report to prisoners subject to Article 206 segregation at Chișinău 13 being "interfered with" by the informal hierarchy. Mr Tugushi's other oral evidence, which we have already summarised, is also relevant. In our judgment, the District Judge was entitled to reach the conclusion she did in relation to Mr Ciorici, and nothing in the post-decision material alters the position.

88. Mr Codreanu's particular circumstances merit close examination. We consider that Mr Evans was wrong to submit that there is no evidence that sex offenders have been mistreated at Chișinău 13. We have mentioned the reference in the 2020 CPT report of one inmate being deliberately placed in a cell with those with a predisposition for violence towards sex offenders. However, Chișinău 13 will know that Mr Codreanu has been extradited pursuant to assurances, that he must be held in specified cells, and that Article 206 protection is available to him. On balance, we think that the District Judge's conclusion was correct in Mr Codreanu's case, even if her reasoning might have been fuller.

89. Mr Lungu as an accused person awaiting trial must be held in a remand prison. On his return to Moldova, his trial will take time for preparation and to list. For these reasons, we are not surprised by the terms of the Respondent's April 2024 assurances. Given the District Judge's erroneous approach to Mr Lungu's case, we must consider the matter for ourselves. It is neither necessary nor proportionate to remit this case to the District Judge for further consideration. We have all the necessary material, and cross-examination of witnesses is not required.

90. Initially, we were attracted by the Appellant's submission that the logic of the District Judge's reasoning, at least her implicit reasoning, is that up to 12 months at Chișinău 13 would be too long. We have little doubt that it would be for a sex offender. Ultimately, however, we are persuaded by Mr Evans' submission that the Respondent's detailed assurances in relation to Chișinău 13 are sufficient in Mr Lungu's case,

notwithstanding the potential length of his incarceration there. We also take into account Mr Tugushi's concessions in his oral evidence.

91. The next issue to be addressed is whether the assurances can in any event be relied on. The Appellants do not question the Respondent's good faith. They urge us to apply a rigorous and beady-eyed approach to the administrative mess which they say characterises the Respondent's conduct in both of the breach cases relied upon (Simionescu and Barbacar), and therefore to conclude that there can be no confidence in there being no risk of repetition.

92. In our judgment, the Respondent has not given inconsistent explanations in Mr Simionescu's case. Their explanations amount to the same, although different bodies have expressed themselves in slightly different ways. The breach occurred owing to a lack of proper communication between two organs of the State. The same applies to the case of Mr Barbacar, where the Respondent has been very frank. The Respondent has assured us that procedures have been changed to ensure no replication of these errors, and that explanation is satisfactory. Moreover, it is supported, at least to some extent, by the absence of evidence of breach in relation to the numerous instances of extradition to Moldova over the past three years. We take into account Mr Josse's submission that the system of monitoring is largely reactive and in and of itself would not be sufficient. However, this is just one piece of an overall evidential jigsaw and it cannot be ignored.

93. It is arguable that the District Judge's analysis of the evidence in relation to Mr Simionescu was somewhat limited. However, the evidential picture before us is much fuller and any deficiencies in the District Judge's reasoning on this point amount to water under the bridge.

94. For all these reasons, the appeal on Article 3 must be dismissed. The District Judge properly approached this case on the basis that the burden was on the requesting state to show that there was no real risk of violation, and she cannot be said to have been wrong to conclude that, in all the circumstances, the detailed assurances that have been provided could be relied on and thereby discharged that burden. In our view, the post-hearing evidence does not alter or undermine that position; in many ways, it confirms it.

THE RENEWED APPLICATIONS FOR PERMISSION TO APPEAL

Mr Ciorici

95. Mr Caldwell advanced a submission that was not made below. It appears for the first time in the Grounds of Appeal. In a nutshell, the submission is that the District Judge conducted the Article 8 balancing exercise on the wrong premise: that Mr Ciorici would be held in closed conditions in Moldova. He has the benefit of a Court Order that he should be held in open conditions.

96. We see some of the force of Mr Caldwell's argument but its proper home is not Article 8. The District Judge cannot be criticised for carrying out the balancing exercise on the basis that was put to her: that Mr Ciorici would be returned to Moldova pursuant to assurances. These assurances were predicated on closed rather than open conditions. If

the balancing exercise fell in favour of extradition on this premise, it is impossible to see how Mr Ciorici could be in a better position if that exercise were carried out on a basis which on the face of it appears less onerous from his point of view.

97. Those representing Mr Ciorici have not asked the Respondent to amend the assurances to refer to open conditions. If Mr Ciorici wishes to pursue this option, we suggest that he approaches the Respondent as soon as possible to that end. But it cannot affect the outcome of this appeal.

Mr Lungu

98. Mr Henley's first argument was that his client's extradition would offend the principle of dual criminality: see sections 137 and 138 of the 2003 Act. His argument was that Mr Lungu's driving, properly analysed, could in 2015 only have amounted to the offence of careless driving in this jurisdiction. The offence of reckless driving was abolished in 1992 and replaced by dangerous driving under the Road Traffic Act 1991, which amended the Road Traffic Act 1988. The offence of dangerous driving is committed only when a person's driving falls far below that would be expected of a competent and careful driver and it would be obvious to such a person that driving in that way would be dangerous. Mr Henley submitted that the matters relied on by the Respondent in its further information, in support of the proposition that Mr Lungu's driving was dangerous – viz. driving with 0.7g/l of blood alcohol and in a right-hand drive vehicle – could not amount to dangerous driving in England and Wales. He submitted that the only inference from all the material available is that Mr Lungu's driving was careless. He could not, therefore be extradited to face an allegation of causing serious by reckless driving.

99. It was observed in oral argument that Mr Henley's submission was not particularly attractive. However, Mr Lungu is entitled to a proper analysis of the issue. Our attention was drawn to the decision of this Court (Leggatt LJ and Holgate J, as they both then were) in *Cleveland v Government of the United States of America* [2019] EWHC 619 (Admin); [2019] 1 WLR 4392. The issue for the purposes of the dual criminality principle is whether from the particulars provided by the requesting State it is possible to infer that the conduct relied on could amount to an equivalent offence in this jurisdiction. It is not necessary to infer that the requested person would be guilty of that offence.

100. The District Judge adopted that approach. In her assessment, Mr Lungu's driving could be regarded as dangerous in that it fell far below the minimum standard expected etc. Mr Lungu's vehicle entered a crossroads in circumstances where he had to give priority to vehicles approaching from his right. There is no evidence that he applied the brakes at any time. In our judgment, the District Judge was fully entitled to reach that conclusion. She committed no error of principle in so doing. We also note (and agree with) the order of Heather Williams J dated 4 November 2024, where, at paragraph 4, she explained why this ground of appeal was not arguable.

101. Mr Henley's subsidiary Article 8 argument also has no merit. The District Judge carried out a careful *Celinski* balancing exercise and there is nothing to suggest that her overall evaluation was wrong. Contrary to Mr Henley's submission, we do think that it is of some relevance to the balancing exercise that Mr Lungu declined to give evidence.

DISPOSAL

102. We dismiss these appeals and, in the cases of Mr Ciorici and Mr Lungu, their renewed applications for permission to appeal.