Neutral Citation Number: [2022] EWHC 2050 (Admin)

Case No: CO/4073/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2022

Before :

LORD JUSTICE POPPLEWELL

-and-

MR JUSTICE CAVANAGH

- -

Between :

PUBLIC PROSECUTOR'S OFFICE, COURT OF APPEAL OF THESSALONIKI, HELLENIC REPUBLIC	**Appellant**
- and -	
FLORJAN HYSA **ANDJUS NELI** **RAAD JALIL**	**Respondents**

- -
- -

JAMES HINES QC and LOUISA COLLINS (instructed by **CPS Extradition Unit**) for the **Appellant**
MARK SUMMERS QC and FLORENCE IVESON (instructed by **JFH Law**) for the **First Respondent**
MARK SUMMERS QC AND STEFAN HYMAN (instructed by **Lawrence & Co, Solicitors**) for the **Second Respondent**
MARK SUMMERS QC AND BEN JOYES (instructed by **Stephen Lickrish Solicitors**) for the **Third Respondent**

Hearing date: 13 July 2022

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Approved Judgment

Mr Justice Cavanagh:

Introduction and overview of the issues in this appeal

1. This is the Appellant's appeal against orders made on 22 November 2021 by District Judge Sarah-Jane Griffiths for the discharge of arrest warrants in respect of the three Respondents, thereby preventing their extradition to Greece in accordance with those warrants.

2. The First Respondent was sought by the Appellant on a conviction arrest warrant, issued on 3 September 2020, in order to serve a sentence of 10 years and two months' imprisonment (of which eight years, eight months, and 29 days are remaining). This sentence was imposed for supplying 17,985.8 grams of cannabis and for illegal entry into Greece. The First Respondent was arrested pursuant to the warrant on 8 April 2021, and was held in custody from that date until the warrant was discharged.

3. The Second Respondent was sought on an accusation arrest warrant, issued on 6 June 2019, for the offence of murder/unlawful killing. The maximum sentence upon conviction is life or a minimum sentence of 10-15 years' imprisonment. The Second Respondent was arrested on 3 August 2020. He too was held in custody until the warrant was discharged.

4. The Third Respondent was sought on a conviction arrest warrant, issued on 26 April 2018, in order to serve a sentence of 10 years' imprisonment (of which nine years, 11 months, and 29 days are remaining) for smuggling a third country citizen. He was arrested on 20 April 2021. Once again, he was held in custody until the warrant was discharged.

5. The reason for the discharge of the warrants was that the District Judge decided that the extradition of the Respondents would be in breach of Article 3 of the European Convention on Human Rights ("the Convention"), as each Respondent would have less than 3 square metres of personal space in the Greek prison at which they would be held, Thessaloniki Prison, also known as Diavata Prison.

6. At an earlier hearing in the proceedings relating to the Second Respondent, on 27 April 2021, the Appellant had, through counsel, conceded that the evidence demonstrated that the state of overcrowding at Diavata prison was such that the 3 sqm minimum requirement would not be satisfied (unless special arrangements are made for a prisoner). The Appellant has maintained this concession throughout, including before us.

7. However, in April 2021 it was indicated on behalf of the Appellant that assurances would be forthcoming which would guarantee that, if extradited, the Second Respondent would be provided with at least 3 square metres of personal space. I will set out the chronology of events in detail later in this judgment. For the moment, it is sufficient to say that by 20 October 2021 no assurances had been provided by the Appellant. On that date, the District Judge made a request to the Appellant for further information as a matter of urgency, pursuant to the procedure set out by the Court of Justice of the European Union in **Aranyosi** (C-404/14) [2016] QB 921 ("the **Aranyosi** procedure"). In essence, this amounted to the grant by the District Judge to the Appellant of a further opportunity to provide assurances in relation to personal

space in respect of the Respondents. The District Judge directed that there be a response by 19 November 2021. By that date, the First Respondent had been in custody for just over seven months, the Second Respondent for about 15 months, and the Third Respondent for about seven months. No assurance was provided by the Appellant by 19 November 2021. On 22 November 2021, Ms Collins, junior counsel for the Appellant, said that the Appellant expected to be in a position to provide an assurance and sought an extension of time.

8. On 22 November 2021, the District Judge refused to grant an extension of time to obtain assurances in respect of the Respondents, for reasons that I will summarise in due course, and instead ordered the discharge of each of the Respondents.

9. Subsequently, assurances were received from the Appellant on 26 November 2021. They were in identical terms in respect of each of the Respondents. They state (in translation):

> "Following your emails of 25 November 2021 [this is a reference to emails from the CPS to the Appellant] in order to inform the British Judicial/Prosecution Authorities, we confirm the following:
>
> "1. In the Detention Establishment of Thessaloniki, the condition of 3 sq.m. living space, which includes the individual equipment of the prisoner (for instance: bedside table) but not the toilet which is shareable, is met. The wanted person will have between 3 sq.m. and 4 sq.m throughout his detention. In case he cannot be provided with the 3 sq.m. living space in the above mentioned Detention Establishment, the Central Transfer Committee will ensure the transfer of the detainee to another Detention Establishment where the necessary condition of 3 sq.m. living space will be met.
>
> 2.The overall surface of the cell will allow the wanted person to move freely between the furniture items in the cell at all times throughout his detention."

10. These assurances were effectively identical to assurances that were given the High Court in the case of **Sula** (referred to below).

11. As the District Judge in the present cases had already discharged the Respondents by the time that the assurances were received, she did not take them into account when coming to her decision.

12. The appeal by the Appellant is on the basis that the District Judge was wrong to discharge the Respondents on the ground that their extradition would be in breach of their Article 3 rights to at least 3 square metres of personal space whilst being held in prison in Greece. The Appellant submits that the District Judge was wrong to decline to grant a further adjournment and extension of time for the **Aranyosi** response, which had the result that she did not take the assurances into account when deciding the Article 3 issue. The Appellant says that the assurances were sufficient to mean that there was no longer any Article 3 objection to extradition, on the ground of

personal space. In the alternative, the Appellant submits that this Court should admit the assurances and should decide whether, in light of those assurances, the discharge of the Respondents on Article 3 personal space grounds should be set aside. In support of these two arguments, the Appellant invites the Court to take account of additional evidence relating to the chronology of events, and the steps taken by the CPS and the Appellant to obtain the assurances, in the form of a witness statement from Miss Nilofar Bawla, Senior Crown Prosecutor within the CPS Extradition Unit and the reviewing lawyer in the Respondents' cases, dated 28 June 2022, plus exhibits. This evidence was not provided to the District Judge, although the District Judge was provided with a chronology of events.

13. The Respondents submit that the decision to discharge them should be upheld. They say that there are no valid grounds for setting aside the District Judge's decision not to grant a further extension of time to provide the assurances. It follows that the District Judge was right to decide the Article 3 personal space issue on the basis that no assurances had been forthcoming and this meant, as was conceded, that the evidence showed that extradition would breach the Respondents' Article 3 rights. The Respondents say that this Court should not admit the assurances itself, primarily because to do so would effectively enable the Appellant to evade the consequences of its failures to comply with the time-limits imposed by the District Judge. The Respondents further submit that the Court should not admit the fresh evidence which the Appellant seeks to rely upon to provide further detail about the efforts that were made to obtain the assurances.

14. The Respondents' primary position is that if the Court finds that the District Judge was entitled to refuse to extend time for the **Aranyosi** response, the Court should decline to admit the assurances itself and should simply uphold the decision to discharge. However, if, contrary to the Respondents' primary case, the Court goes on to consider whether the assurances that were eventually provided were sufficient, the Court should find that they were not sufficient. This is for one or both of two reasons. First, the language of the assurances provides inadequate protection and, second, in any event there is evidence which shows that assurances such as these cannot be relied upon. In relation to the latter point, the Respondents seek leave to rely upon fresh evidence, not provided to the District Judge, which they say shows that similar assurances about personal space in Diavata Prison that were made by the Greek Judicial Authority in an earlier case, the case of Jamal Owda, were not honoured. This fresh evidence had not been available at the time when the Divisional Court held that similar assurances were sufficient in the case of **Sula**.

15. In addition, the Respondents submit that the Appellant's challenge is really a challenge to a case management decision, namely the decision to refuse to grant an extension of time to provide the assurances, and, as such should have been brought by way of judicial review, rather than by way of appeal under the Extradition Act 2003 ("the EA 2003"), sections 28 and 29.

16. The parties were agreed that, even if the District Judge was wrong to refuse to grant the adjournment, the court should not remit the case to the District Judge to reconsider the Art 3 personal space issue. They were agreed that, if the need arose for the Art 3 personal space issue to be reconsidered on its merits, this should be done by this Court.

17. At one stage, the Respondents sought to cross-appeal in relation to arbitrary detention (Article 5), unfair trial (Article 6), and private life rights (Article 8), in respect of one or more of the Respondents. These matters were not dealt with by the District Judge because, at the hearing on 22 November 2022, the Respondents expressly abandoned all other objections to extradition, save for the Article 3 personal space issue. There were obvious tactical benefits in this course of action, because, if the Respondents had continued to argue that there were other grounds for discharge, then it would have been clear that it would be necessary for further hearings to take place, come what may, and this might have inclined the District Judge to grant the Appellant the extension of time that the Appellant was seeking for the assurances. The Respondents subsequently withdrew their cross-appeal.

18. There is a disagreement between the parties as to the nature and extent of the matters that can be dealt with if the appeal succeeds and the case is remitted to the District Judge. The Respondents say that, even if, on remission, the District Judge is required to find that extradition is not incompatible with the Respondent's human rights because of the Article 3 personal space issue, it is still open to the Respondents to argue that there are other Article 3 reasons why extradition should not take place, such as the prevalence of inter-prisoner violence in the prison and the risk of transfer to another prison which is not Article 3-compliant. Furthermore, they say that it will be open to them to argue that extradition should be refused for other reasons, including the Article 5 and Article 6 grounds that were set out in the now-withdrawn cross-appeal and, where appropriate, Article 8 grounds. The question of the nature and extent of the issues that the District Judge can deal with if the cases are remitted will only arise for determination if the Appellant's appeal is successful. If the appeal fails, the discharges will stand and so there will be nothing to remit to the District Judge.

19. There is one further matter of dispute between the parties which we should mention. This is that the Appellant contends that, even if the appeal is unsuccessful, there is nothing to prevent the Appellant from issuing fresh arrest warrants and, if appropriate assurances are made about personal space and there are no other reasons to discharge, there is nothing to stop the Respondents' extradition taking place pursuant to the new arrest warrants. On behalf of the Respondents, Mr Summers QC submits that it would be an abuse of process to seek to obtain the Respondents' extradition by means of fresh extradition warrants. On behalf of the Appellant, Mr Hines QC submits that there is no reason why fresh arrest warrants cannot be issued and executed.

20. I take the view that it is not necessary nor appropriate for us to decide this matter. If this issue arises, it will need to be argued before the District Judge who deals with the fresh warrants, and is not something that should be dealt with, at this stage, by the Divisional Court. Accordingly, I will not express any opinion upon it. However, as I will explain, and as Mr Summers QC has emphasised, the Court's decision as to what is the "relevant question" in the appeal might potentially have an impact upon this issue.

21. Before the Court goes on to consider the issues that I have described above, or as many of them as arise for consideration in light of the Court's other conclusions, it will be necessary, at the outset, to consider the prior question as regards what is the "relevant question" in the appeal.

22. The potential significance of this question requires explanation. An appeal such as this, under sections 28 and 29 of the EA 2003, may only be allowed if the District Judge ought to have decided the relevant question differently (s29(3)). It is necessary, therefore, to determine what the "relevant question" is for this purpose. This is potentially an important question, for three reasons. First, if the "relevant question" is solely whether the District Judge should have granted an adjournment to enable the Appellant to provide an assurance, then it may well be that this challenge should have been brought by way of judicial review, rather than by way of appeal under ss 28 and 29. Second, the nature of the "relevant question" will determine the scope of this Court's enquiry. If the only relevant question is whether the District Judge should have granted an adjournment, then the issues as to whether the Court should itself admit the assurances and as to whether the assurances are sufficient do not arise. On the other hand, if the relevant question is whether the District judge should have discharged the Respondents on Article 3 personal space grounds, then, even if the Court decides that the District Judge was right not to adjourn, the Court will still have to go on to consider whether it should admit the assurances and, if they are admitted, will also have to consider whether the assurances are adequate and reliable. Third, the exact nature of the "relevant question" affects the scope of the issues that the District Judge is permitted to deal with on remission, if the appeal succeeds. In that event, then the Divisional Court must direct the District Judge to proceed as she would have been required to do if she had decided the relevant question differently at the extradition hearing (section 29(5)). In other words, the Divisional Court must tell the District Judge how to answer the relevant question. If, for example, the relevant question is a very broad one such as "Are there any Human Rights objections to extradition?", and the Court directs the District Judge to answer the question in the negative, this would prevent the Respondents from being able to argue other Article 3 issues, or the Article 5, 6 and 8 issues on remission.

23. Against this background, the issues, or potential issues, that this Court has to determine, are as follows:

(1) What is the "relevant question" in the appeal?;

(2) Should the challenge have been brought by way of judicial review (and, if so, what consequences follow)?;

(3) Was the District Judge wrong to refuse to grant a further adjournment to enable the Appellant to provide assurances?;

(4) In light, inter alia, of the answer to (3), should this Court admit the assurances that have now been provided by the Appellant? In considering this question, should the Court take account of the new evidence provided by the Appellant, in the form of the witness statement of Ms Bawla, plus exhibits?;

(5) If the answer to (3) or (4) is "yes", are the assurances adequate and reliable? In considering this matter, should the Court admit and take account of the fresh evidence supplied by the Respondents in relation to the **Owda** case?; and

(6) In light of the answers to the above questions, should the appeal succeed or be dismissed? If the appeal succeeds, what are the matters that the District Judge may deal with on remission?

24. I will first set out the relevant legal framework and refer to other cases dealing with Article 3 breaches in Diavata prison, and relevant evidence about conditions there, and we will summarise the reasons given by the District Judge for refusing to grant a further adjournment to enable the Appellant to provide assurances and for discharging the Respondents. I will then deal with the above questions, or as many of them as arise for consideration, in turn.

25. The Appellant was represented before us by Mr James Hines QC and Ms Louisa Collins. Mr Mark Summers QC was leading counsel for all three Respondents. Ms Florence Iveson was junior counsel for the First Respondent, Mr Stefan Hyman was junior counsel for the Second Respondent, and Mr Ben Joyes was junior counsel for the Third Respondent. The Court is grateful to all counsel for their helpful submissions, both oral and in writing.

The relevant legal framework

The Criminal Procedure Rules 2020 ("CPR") and the power to adjourn extradition hearings

26. The CPR apply to extradition cases. The overriding objective, in rule 1.1 of the CPR, states as follows, in relevant part:

> "1.1.—(1) The overriding objective of this procedural code is that criminal cases be dealt with justly.
> (2) Dealing with a criminal case justly includes—
> (a)acquitting the innocent and convicting the guilty;
> (b)dealing with the prosecution and the defence fairly;
> (c)recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
> ….
> (e)dealing with the case efficiently and expeditiously;
> …; and
> (g)dealing with the case in ways that take into account—
> (i)the gravity of the offence alleged,
> (ii)the complexity of what is in issue,
> (iii)the severity of the consequences for the defendant and others affected, and
> (iv)the needs of other cases."

27. Rule 1.3 of the CPR provides that:

> "1.3. The court must further the overriding objective in particular when—
> (a)exercising any power given to it by legislation (including these Rules);
> (b)applying any practice direction; or
> (c)interpreting any rule or practice direction."

28. Rule 50.2 sets out a special objective in extradition cases, as follows:

> "50.2. When exercising a power to which this Part applies, as well as furthering the overriding objective, in accordance with rule 1.3, the court must have regard to the importance of—
> (a)mutual confidence and recognition between judicial authorities in the United Kingdom and in requesting territories; and
> (b)the conduct of extradition proceedings in accordance with international obligations, including obligations to deal swiftly with extradition requests."

29. The power to adjourn an extradition hearing in the magistrates' court is set out in rule 50.3, as follows:

> "50.3….
> (4) The court may exercise its power to adjourn—
> (a)if either party asks, or on its own initiative; and
> (b)in particular—
> (i)to allow there to be obtained information that the court requires,
> …"

30. Rule 50.3(7)(a) deals with the extension of time limits. It provides that:

> "50.3…
> (7) The court may—
> (a)shorten a time limit or extend it (even after it has expired), unless that is inconsistent with other legislation; …"

31. Rule 50.4(1)(a) of the CPR provides that:

> "50.4.—(1) The magistrates' court and the parties have the same duties and powers as under Part 3 (Case management), subject to—
> (a)rule 50.2 (Special objective in extradition proceedings); …"

32. Guidance is also given for extradition cases in the Criminal Procedure Directions 2015. Paragraph 50A.1, under the heading "General matters: expedition at all times" states at rule 50A.1(iii):

> "50A.1 Compliance with these directions is essential to ensure that extradition proceedings are dealt with expeditiously … It is of the utmost importance that orders which provide directions for the proper management and progress of cases are obeyed so that the parties can fulfil their duty to assist the court in furthering the overriding objective and in making efficient use of judicial resources. To that end: …
> (iii) where the issues are such that further information from the requesting authority or state is needed then it is essential that the request is formulated clearly and in good time …"

Human rights and extradition

33. Sections 21 and 21A of the EA 2003 provide that a person whose extradition is being sought pursuant to an arrest warrant should be discharged if extradition would be incompatible with their convention rights within the meaning of the Human Rights Act 1998 (see s21(2) and 21A(4)(a)).

34. Sections 21 and 21A provide as follows:

> **"21 Person unlawfully at large: human rights**
>
> (1) If the judge is required to proceed under this section (by virtue of section 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).
>
> (2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.
>
> (3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.
>
> (4) If the judge makes an order under subsection (3) he must remand the person in custody or on bail to wait for his extradition to the category 1 territory.
>
> (5) If the person is remanded in custody, the appropriate judge may later grant bail."
>
> **21A Person not convicted: human rights and proportionality**
>
> (1) If the judge is required to proceed under this section (by virtue of section 11), the judge must decide both of the following questions in respect of the extradition of the person ("D")—
>
> (a) whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998;
>
> (b) whether the extradition would be disproportionate.
>
> (2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
>
> (3) These are the specified matters relating to proportionality—

> (a) the seriousness of the conduct alleged to constitute the extradition offence;
>
> (b) the likely penalty that would be imposed if D was found guilty of the extradition offence;
>
> (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D.
>
> (4) The judge must order D's discharge if the judge makes one or both of these decisions—
>
> (a) that the extradition would not be compatible with the Convention rights;
>
> (b)that the extradition would be disproportionate.
>
> (5) The judge must order D to be extradited to the category 1 territory in which the warrant was issued if the judge makes both of these decisions—
>
> (a) that the extradition would be compatible with the Convention rights;
>
> (b) that the extradition would not be disproportionate.
>
> (6) If the judge makes an order under subsection (5) he must remand the person in custody or on bail to wait for extradition to the category 1 territory.
>
> (7) If the person is remanded in custody, the appropriate judge may later grant bail.
>
> (8) In this section " relevant foreign authorities " means the authorities in the territory to which D would be extradited if the extradition went ahead."

35. Section 21 applies to persons who are being sought under conviction warrants (the First and Third Respondent) and section 21A applies to persons who are being sought under an accusation warrant (the Second Respondent).

Article 3

36. The relevant Convention right is that conferred by Article 3.

37. Article 3 provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

38. The test for establishing whether a feared infringement of a person's Article 3 rights is sufficient to require his discharge under section 21(2) or section 21A(3)(a) of the EA

2003 is whether there are strong or substantial grounds for believing that there is a "real" risk of his being subjected to torture or other inhuman or degrading treatment if he is returned to the requesting state: **Soering v United Kingdom** (1989) 11 EHRR 439 (at paragraph 91).

39. The burden of establishing a claim under Article 3 lies on the Requested Person: **Aziz v Secretary of State for the Home Department** [2003] EWCA Civ 118 (per Schiemann LJ at paragraph 19).

40. There are a number of different ways in which extradition might potentially infringe a person's Article 3 rights. One is that the extradited person will not be afforded a minimum amount of personal space in prison. The general principles were clarified by the Grand Chamber of the European Court of Human Rights ("ECtHR") in the case of **Mursic v Croatia** (App 7334/13) (20 October 2016) (2017) 55 EHRR 1, at paragraphs 96-101. The Grand Chamber held that detention in less than 3sqm of personal space (which includes the space for furniture, but excludes toilet facilities) violates Article 3 unless three cumulative conditions are met: the exposure to less than 3sqm is short (measuring days), occasional and minor; that it is accompanied by sufficient time and adequate activities outside the cell and that the detention conditions are otherwise compliant with Article 3. These Convention principles were confirmed to apply to domestic cases in **Grecu v Romania** [2017] EWHC 1427 (Admin).

Rebuttable presumption of compliance and assurances

41. In the case of a request by a Judicial Authority of a member state of the Council of Europe which is also a member state of the European Union, there is a strong, but rebuttable, presumption that it will comply with its obligations under Article 3 ECHR. If cogent evidence is adduced that there is a real risk that it will not, ordinarily in the context of something approaching an international consensus to that effect, extradition must be refused unless the requesting Judicial Authority can give, and if necessary secure from the relevant authority of its state, an assurance sufficient to dispel that real risk: see **Krolik v Poland** [2012] EWHC 2357 (Admin) at paragraphs 4-7.

42. The principles concerning the provision of assurances in cases concerning potential Convention rights breaches are set out in the judgment of the ECtHR in **Othman (Abu Qatada) v UK** (2012) 55 EHRR 1. That case concerned a potential breach of a different Article of the ECHR, but the principles are the same for other potential Convention right breaches. The question for the ECtHR in **Othman** was whether the assurances obtained were sufficient to remove any real risk of breach. The guidance given by the Court at paragraph 189 includes the following:

> • There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment. The weight to be given to assurances from the receiving State depends, in each case, on the circumstances prevailing at the material time.

• More usually, the Court will assess first, the quality of assurances given and, second, whether, in light of the receiving State's practices they can be relied upon. In doing so, the Court will have regard, inter alia, to the following factors:

(i) whether the terms of the assurances have been disclosed to the Court;

(ii) whether the assurances are specific or are general and vague;

(iii) who has given the assurances and whether that person can bind the receiving;

(iv) if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them;

*(v)*whether the assurances concern treatment which is legal or illegal in the receiving State;

(vi) whether they have been given by a Contracting State;

(vii) the length and strength of bilateral relations between the sending and receiving States, including the receiving State's record in abiding by similar assurances;

(viii) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers;);

(ix) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible;

*(x)*whether the applicant has previously been ill-treated in the receiving State;

(xi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State.

The Aranyosi Procedure

43. In **Aranyosi**, the Court of Justice of the European Union gave guidance on the process to be adopted where Article 3 is engaged.

44. When an executing Judicial Authority is seeking to establish whether extradition will contravene a person's Article 3 rights, the first stage is as follows:

> "89. To that end, the executing Judicial Authority must, initially, rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing member state and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention. That information may be obtained from, inter alia, judgments of international courts, such as judgments of the Court of Human Rights, judgments of courts of the issuing member state, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN."

45. Where a generalised risk is identified, the executing Judicial Authority must then "make a further assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk because of the conditions for his detention envisaged in the issuing member state." (paragraph 92)

46. If there are such substantial grounds, the executing Judicial Authority is required to make a request for further information under Article 15 of the of the Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States (2002/584/JHA)) ("the Framework Decision"):

> "95. To that end, that authority must, pursuant to article 15(2) of the Framework Decision, request of the Judicial Authority of the issuing member state that there be provided as a matter of urgency all necessary supplementary information on the conditions in which it is envisaged that the individual concerned will be detained in that member state.
>
> …
>
> 97. In accordance with article 15(2) of the Framework Decision , the executing Judicial Authority may fix a time limit for the receipt of the supplementary information requested from the issuing Judicial Authority. That time limit must be adjusted to the particular case, so as to allow to that authority the time required to collect the information, if necessary by seeking assistance to that end from the central authority or one of the central authorities of the issuing member state, under article 7 of the Framework Decision. Under article 15(2) of the Framework Decision, that time limit must however take into account the need to observe the time limits set in article 17 of that Framework Decision. The issuing Judicial Authority is obliged to provide that information to the executing Judicial Authority."

47. The time limits set out in Article 17 of the Framework Decision are short. They are as follows:

> "1. A European arrest warrant shall be dealt with and executed as a matter of urgency.
>
> 2. In cases where the Requested Person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.
>
> 3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the Requested Person.
>
> 4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing Judicial Authority shall immediately inform the issuing Judicial Authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days."

48. At paragraph 104 of **Aranyosi**, the Court said:

> "……where there is objective, reliable, specific and properly updated evidence with respect to detention conditions….that demonstrates that there are deficiencies….which may affect certain places of detention, the executing Judicial Authority must determine …whether there are substantial grounds to believe that the individual concerned…will be exposed, because of the conditions for his detention, to a real risk of inhuman or degrading treatment…..To that end, the executing Judicial Authority must request that supplementary information be provided by the issuing Judicial Authority which… must send that information within the time limit specified in the request. The executing Judicial Authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk. If the existence of that risk cannot be discounted within a reasonable time, the executing Judicial Authority must decide whether the surrender procedure should be brought to an end."

Appeals against discharge

49. The right of a Judicial Authority to appeal against discharge is to be found in sections 28 and 29 of the EA 2003, which provide as follows:

> **"28 Appeal against discharge at extradition hearing**
>
> *(1)* If the judge orders a person's discharge at the extradition hearing the authority which issued the Part 1 warrant may appeal to the High Court against the relevant decision.

(2) But subsection (1) does not apply if the order for the person's discharge was under section 41.

(3) The relevant decision is the decision which resulted in the order for the person's discharge.

(4) An appeal under this section—

(a) may be brought on a question of law or fact, but
(b) lies only with the leave of the High Court.

(5) Notice of application for leave to appeal under this section must be given in accordance with rules of court before the end of the permitted period, which is 7 days starting with the day on which the order for the person's discharge is made.

29 Court's powers on appeal under section 28

(1) On an appeal under section 28 the High Court may—

(a) allow the appeal;

(b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the judge ought to have decided the relevant question differently;
(b) if he had decided the question in the way he ought to have done, he would not have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the judge deciding the relevant question differently;

(c) if he had decided the question in that way, he would not have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) quash the order discharging the person;

(b) remit the case to the judge;

(c) direct him to proceed as he would have been required to do if he had decided the relevant question differently at the extradition hearing.

(6) A question is the relevant question if the judge's decision on it resulted in the order for the person's discharge.

(7) If the court allows the appeal it must remand the person in custody or on bail.

(8) If the court remands the person in custody it may later grant bail.

50. In the present case, leave to appeal was granted by Dove J on 14 March 2022.

Other cases dealing with Article 3 breaches in Diavata prison, and relevant evidence about the personal space available to prisoners there

51. There are two relevant judgments, one of which pre-dates the ruling of the District Judge in this case and the other of which post-dates it.

52. In **Owda v Court of Appeal, Thessaloniki, Greece** [2017] EWHC 1174 (Admin), the Appellant appealed against the conclusion of the District Judge that none of the three aspects of the prison regime relied upon in support of the Article 3 challenge (overcrowding, lack of staff or medical facilities) individually or collectively approached the necessary threshold to discharge the Appellant's arrest warrant. The evidence in that case showed that Diavata prison is overcrowded and that for some inmates the minimum personal space requirement of 3 sqm is not met. The District Judge accepted an assurance by the Greek authorities that the Appellant would be afforded at least 3 sqm. The Divisional Court upheld the District Judge, holding that the assurance was reliable and provided a complete answer to the personal space issue (see paragraph 16).

53. The Divisional Court's judgment in **Owda** was handed down on 18 May 2017. In the period between that date and the District Judge's ruling in the present case, further evidence about conditions at Diavata became available. In particular, on 9 April 2020, the European Committee for Prevention of Torture and Inhuman or Degrading Treatment of the Council of Europe published a report ("the CPT Report") which was highly critical of the state of the Greek prison system, and called conditions in Diavata prison an affront to human dignity.

54. On 2 October 2020, the Second Respondent served a report, dated 18 September 2020, by Professor Tsitselikis, a prisons expert, which described widespread problems at Diavata prison. Based on the (then) contemporaneous occupancy levels at Diavata, Prof. Tsitselikis calculated that the Second Respondent would receive about 2.38 sqm of personal space in multi-occupancy accommodation. On 10 March 2021, the Greek Ministry of Citizen Protection confirmed that prisoners in Diavata receive less than 3 sqm of personal space. This information was served on the Second Respondent on 27 April 2021, at his third extradition hearing. Though further information was served from time to time by the Greek authorities, they did not suggest that the position had changed, so that prisoners at Diavata had at least 3 sqm of personal space. The only way in which the 3 sqm minimum requirement could be met for the Respondents, therefore, was if sufficient assurances were given by the Appellant to that effect. I should add that the Appellant has not made an equivalent concession in relation to other disputed issues relating to Article 3, such as inter-prisoner violence and other material conditions.

55. The second case is **Sula v Public Prosecutor at Thessaloniki Court of Appeal Greece** [2022] EWHC 230 (Admin), decided on 7 February 2022. In that case, an

assurance was provided in near identical terms to that provided to these Respondents and the Divisional Court found that this was sufficient to mean that extradition would not contravene the Appellant's Article 3 rights. The assurance in **Sula** was served on 14 December 2021 (judgment, paragraph 27).

The decision of the District Judge

56. The final hearing in relation to the three Respondents commenced on 20 October 2021, and was listed for three days. At the commencement of this hearing, Ms Collins applied on behalf of the Appellant for an adjournment, in order to have more time to provide information relating to prison conditions. Ms Collins repeated the Appellant's concession (first made on 27 April 2021) that, on the basis of the evidence presently before the court, the Respondents would have less than 3 sqm personal space in Diavata prison. The Respondents opposed the application to adjourn. It was clear to the District Judge in any event that the hearing would not finish in the time available (in part because the Respondents were not brought to court on the second day, and in part because more time would be needed to hear oral evidence on various issues).

57. The District Judge decided to make an **Aranyosi** request to the Appellant, as the Greek Judicial Authority, in respect of each of the Respondents, with a direction that the Appellant should provide a response by no later than 19 November 2021. The District Judge also adjourned the hearing to 22 November 2021. This provided the Appellant with nearly a month to respond.

58. The questions that were asked of the Appellant were the following:

(a) Will the [Requested Person] be accommodated in a cell which provides him with at least 3 sqm of personal space (excluding any in-cell sanitary facilities) at all times throughout his detention. If the answer is "yes", will he have between 3 sqm and 4 sqm?;

(b) Will the overall surface of the cell allow [the Requested Person] to move freely between the furniture items in his cell at all times throughout his detention?;

(c) Given the questions above, will the Requested Person be detained at the general Detention Premises at Thessaloniki?

59. The deadline of 19 November 2021 was missed, and no assurances had been provided by the time of the hearing on 22 November 2021. At the start of that hearing, Ms Collins informed the District Judge that the Appellant had responded to a similar request by the High Court in the case of **Sula**, but the response had not been translated and they were unable to tell her what it said. (In fact, when the document was translated it turned out not to consist of assurances but of further information about prison conditions at Diavata, which did not suggest that prisoners there would have at least 3 sqm of personal space.) Ms Collins made a further application to adjourn, to allow time for the response in the **Sula** case to be translated, which was expected the following day, and for additional time to allow the Appellant to respond

to the **Aranyosi** request by giving assurances in relation to the three Respondents to these proceedings.

60. The District Judge refused the application to adjourn. She gave an oral ruling which she then provided in writing. The District Judge had regard to the history of the proceedings (set out below) and, in particular, that the Appellant has had since 21 March 2021, when the concession about inadequate personal space at Diavata for Article 3 purposes was made, to provide assurances. She noted that the Appellant was not indicating that assurances in the present cases would be available the following day: at best, the document that would be translated by then would be an assurance in a different case, **Sula**. The District Judge took account of the CPR and, in particular, of the overriding objective and the special objective in extradition cases. She observed that it is anticipated that extradition cases will be dealt with within six weeks. The District Judge recognised that the offences that were the subject of the arrest warrants were serious ones and said that this was not something that she could ignore. However, there had already been significant delay in respect of all three Respondents, but especially in the case of the Second Respondent, who had been arrested 15 months previously. She said that it was not right that people spend indefinite periods in custody whilst waiting for the Judicial Authority to put its house in order. Substantially more than six weeks had elapsed.

61. The District Judge pointed out that it was clear that extradition should not take place if the 3 sqm minimum personal space requirement will not be satisfied. The Appellant had made a concession that this requirement would not be satisfied in the Respondents' cases. The District Judge had agreed with the Respondents that the Appellant had been given sufficient time to respond to questions from the CPS about assurances, even before the hearing on 20 October, but she had taken the view on that occasion that she should make an **Aranyosi** request, "court to court, judge to judge, about the conditions for these RPs." Ms Collins confirmed that, once the questions, which the District Judge had drafted, were approved by the parties, they were sent as a matter of urgency to the Appellant. A similar request was subsequently sent by the High Court in **Sula**, again with the deadline of 19 November 2021. Though she had been told that a response had been received in **Sula**, albeit yet to be translated, the position was that no response of any kind had been received in the Respondents' case. Some further information had been received from the Appellant, but this did not provide any assurance; rather it confirmed the overcrowding problems at Diavata. (This was a reference to further information which had been provided by the Greek Ministry of Citizen Protection dated 11 October 2021.)

62. The District Judge said that the Appellant had not provided an explanation for not having responded to her request, and had not given a time by which they might be able to respond. It had been clear that she required a response by 19 November 2021, and, indeed, she gave a longer period to respond than was given by the High Court in **Sula**. Ms Collins had said that there was some confusion about whether one response was required, or three, but this does not explain why no response at all was received. The Court had given ample time throughout the proceedings to the Appellant to provide further information, including via the **Aranyosi** process.

63. The District Judge addressed Ms Collins's submission that the Appellant expected to be able to respond imminently because of the information that had been provided in the **Sula** case. She said that the questions were not complicated and would not have

come as a surprise to the Appellant. If the Appellant was in a position to provide a response in **Sula**, the Appellant should have been in a position to provide a response in the Respondents' cases (I repeat that, at this stage, the District Judge was under the mistaken impression that the Appellant had given an assurance, albeit untranslated, in **Sula**. In fact, no personal space assurance was given in **Sula** until 14 December 2021). The District Judge said that, even if an assurance had been given in **Sula** before 22 November 2021, it did not amount to an assurance in the Respondents' case.

64. The District Judge added that, on 20 October 2021, when making the **Aranyosi** request, she had made clear that unless there was an extremely good reason for non-compliance, she would be unlikely to grant further time. In the event, the Appellant did not comply with the deadline and gave no reason whatsoever for non-complying, and did not provide a date by which a response would be filed. The District Judge said that given the history of delay so far, she was not satisfied that she was going to get a response any time soon.

65. For these reasons, the District Judge refused to grant the Appellant's application to adjourn. She then sought and obtained a confirmation from the Respondents that they were abandoning all other objections to extradition, apart from Article 3.

66. This meant that the District Judge had to decide whether to order extradition or to discharge the Respondents on the basis of the Article 3 personal space issue alone. This decision had to be taken on the basis of the evidence that had been presented to her, which did not include an assurance that the Respondents would be guaranteed a minimum of 3 sqm of personal space. The District Judge found that she could not be satisfied that the Respondents would be provided with 3 sqm of personal space. Accordingly, she found that there was a real risk that the Respondents would face treatment contrary to Article 3, and so she ordered the discharge of the Respondents. In the cases of the First and Third Respondents, who were held under conviction warrants, this was pursuant to section 21(2) of the 2003 Act. In the case of the Second Respondent, this was pursuant to section 21A(4) of the 2003 Act.

The issues for the Court

(1) What is the "relevant question" in the appeal?

67. As Mr Summers QC put it, there are a range of candidates for the "relevant question" which range in a "Russian doll" manner from the very broad to the very narrow. These include, from the broadest to the narrowest:

(1) The question whether extradition would be compatible with the Respondents' Convention rights (of all types);

(2) The question whether extradition would be compatible with the Respondents' Article 3 rights (not limited to personal space, but encompassing all Article 3 issues, including inter-prisoner violence and other material conditions);

(3) The question whether extradition would be compatible with the Respondents' Article 3 rights to a minimum of 3 sqm of personal space; and

(4) The question whether the District Judge was right to refuse to adjourn the extradition hearing on 22 November 2021 so as to give the Appellant more time to provide an assurance regarding personal space.

68. Mr Summers QC was keen to dissuade the Court from adopting options (1) or (2), in case that had adverse implications for his clients' ability to advance other Article 3 objections, or other human rights ground for objecting to extradition, upon remission, if the appeal were to succeed. He also submitted that if option (4) was right, the Appellant was in difficulties, because this would mean that the challenge to the District Judge's decision was a challenge to a case management decision and so should not have been brought as an appeal under EA 2003, ss 28 and 29 at all, but should have been brought by way of judicial review.

69. Mr Summers QC invited the Court to conclude that the "relevant question" was question (3). As I understood it, when he was asked about this during oral argument, Mr Hines QC did not demur from this, though without resiling from his submission that if the appeal succeeds so that the case is remitted to the District Judge, the inevitable consequence should be that the District Judge should order extradition, as the decision that extradition could not take place on Article 3 personal space grounds would be reversed and the Respondents had voluntarily abandoned any other ground of challenge.

70. In my judgement, the "relevant question" for the purposes of section 29 is indeed, question (3), the question whether extradition would be compatible with the Respondents' Article 3 rights to a minimum of 3 sqm of personal space. EA 2003, section 29(6) defines a question as being the "relevant question" if the judge's decision on it resulted in the order for the person's discharge. In the present cases, the order for the Respondents' discharge resulted from the District Judge's decision that extradition would contravene the Respondents' Article 3 rights because the minimum 3 sqm of personal space could not be guaranteed. It is true that this ruling became an inevitability once the District Judge had decided not to grant an adjournment or an extension of time to provide the assurances, but the fact remains that it was the decision on the Article 3 personal space issue which resulted in the Respondents' discharge.

71. By the same token, it is clear that the "relevant question" was specifically concerned with the Article 3 personal space issue. The District Judge did not rule upon any other Article 3 grounds for refusing to extradite, still less on any other human rights issues, whether concerned with Article 5, Article 6, or Article 8.

72. It follows from this that the task for the Divisional Court has been to determine whether the District Judge was wrong to decide as she did to discharge the Respondents because of the Article 3 personal space issue. In considering this matter, it is necessary to address whether the District Judge was right wrong to decide not to adjourn, because this decision was a key contributory factor to the decision on the Article 3 personal space issue, but it is also necessary for this Court to consider whether to admit the assurances that were subsequently provided by the Appellant. Furthermore, if the Court decides that the District Judge should have granted an adjournment to enable the Appellant to provide the assurances, or the Court decides to admit the assurances, it will be necessary to consider whether, in light of the assurances, the decision to discharge on Article 3 personal space issues was wrong.

(2) Should the challenge have been brought by way of judicial review (and, if so, what consequences follow)?

73. On several occasions, the High Court has made clear that if, in an extradition case, a challenge is made to a case management decision by the District Judge, such as a decision not to adjourn, then the challenge should be by way of judicial review, not by way of an appeal under EA 2003, ss 28 and 29. See, for example, **Olah v Czech Republic** [2008] EWHC 2701 (Admin) (Moses LJ and Blake J) at paragraph 8, and **R (Slavik) v Slovak Republic** [2011] EWHC 265 (Admin), at paragraph 20, per Ouseley J. This has the procedural advantage that the person challenging the case management decision does not have an automatic right to a full hearing, but must obtain permission to proceed.

74. In these proceedings, however, in light of the answer to issue (1), it is clear that the Appellant was right to challenge the District Judge's decision by way of an appeal under EA 2003, ss 28 and 29. Though the proximate cause of the decision that extradition would contravene the Respondents' Article 3 rights was the District Judge's case management decision not to grant an adjournment (pursuant to CPR, rule 50.3(4)(b)((i)) and not to extend time for the response to the **Aranyosi** request (pursuant to CPR, rule 50.3(7)), the challenge was to the decision to discharge on Article 3 personal space grounds. It was not simply a challenge to the refusal to adjourn or to grant an extension of time to provide assurances. There are other cases in which it has been held that an appeal has properly been brought under sections 28 and 29 in relation to a decision to discharge, even though in reality the central question is concerned with a case management decision, namely as whether the District Judge was right to decline to grant an adjournment. See **India v Dhir** [2020] EWHC 200 (Admin) and **Romania v Iancu** [2021] EWHC 1107 (Admin)

75. It follows that there is no procedural objection to this appeal on the basis that the challenge is a challenge to a case management decision which can only be challenged by way of judicial review.

76. I should add three observations in passing in relation to the judicial review point.

77. First, even if the challenge should have been brought by way of judicial review, and had mistakenly been brought under ss28 and 29, this Court could have treated the appeal as if it had been an application for judicial review and could have proceeded to decide whether to grant permission to apply and then whether to grant judicial review. This is what was done by the Divisional Court in **Olah**.

78. Second, whilst the function of the Court if the challenge not to adjourn and extend time was a claim for judicial review would be to apply the standard public law **Wednesbury** test to the District Judge's decision, in practice this would make no difference. In essence, the test for review of the adjournment decision is the same whether this is properly regarded as an application for judicial review or as an appeal under ss 28 and 29.

79. Third, Mr Summers QC expressed some hesitation in advancing the suggestion that the Appellant's challenge should have been brought by way of judicial review, because of the potential implications for bail. Where a person is discharged and, immediately after the judge orders discharge, the Judicial Authority informs the judge

that it intends to appeal under section 28, the judge may remand the person in custody or on bail whilst the appeal is pending (EA 2003, sections 30(1) and (2)). If the person is remanded in custody, he or she may later be given bail (section 30(2)). There is no equivalent statutory power to remand in custody or grant bail if a person is discharged and the Judicial Authority evinces an intention to apply for judicial review. This means that the person must be released unconditionally and this must remain the position until the application for judicial review is determined. Mr Summers QC frankly recognised that it might be regarded as unsatisfactory that a person who was wanted for extradition should be unconditionally released into the community pending a challenge to the decision for discharge, without there being any power to remand in custody or to impose conditions on bail. However, there appears to be no statutory power in such circumstances to hold the person in custody or to grant conditional bail.

80. This difficulty falls away if, as I consider appropriate, a case like this is properly dealt with by way of appeal rather than by way of judicial review. The judicial review route is appropriate for cases in which the only challenge is to a case management decision. In such cases (or at least in the vast majority of such cases), the proceedings in the Magistrates' Court will still be under way and so the normal custody and bail regime will continue to apply. There is no risk that the Requested Person will be released unconditionally pending the outcome of the judicial review proceedings. On the other hand, in cases in which, following a case management decision, a District Judge has ordered discharge, or has ordered extradition, the challenge is properly brought as an appeal under the EA 2003, ss 28 and 29, and so, once again, the normal custody and bail regime continues to apply.

(3) Was the District Judge wrong to refuse to grant a further adjournment to enable the Appellant to provide assurances?

81. Even though this is not the "relevant question" for this appeal, it is necessary for the Court to address this question head-on. It is common ground that, on the basis of the evidence that was before the District Judge on 22 November 2021, she was right to discharge the Respondents on the basis that extradition would contravene their Article 3 personal space rights. The Appellant accepts that, in the absence of assurances, this was the correct decision. It follows that the only basis upon which it can be contended by the Appellant that the District Judge should have decided the relevant question differently is by contending that the District Judge should have granted an adjournment and extension of time for assurances on 22 November 2021, so that, by the time she took her decision, she would have seen the assurances which arrived four days later, on 26 November 2021. It follows in turn that, in order to persuade this Court that the District Judge ought to have decided the relevant question differently, the Appellant must show that the District Judge was wrong to exercise her discretion in relation to the adjournment and the extension of time for assurances. This is also relevant to the question whether the Divisional Court should admit the assurances.

The test to be applied

82. The decisions relating to adjournment and extension of time were discretionary case management decisions which were taken by the District Judge pursuant to her powers under the CPR. It is stating the obvious to say that the District Judge had a broad

discretion in relation to adjournment decisions and decisions concerned with the extension of time limits (CPR 50.3(4) and (7)(a), respectively).

83. In **Director of Public Prosecutions v Petrie** [2015] EWHC 48 (Admin), a case about a District Judge's refusal to grant an adjournment to the prosecution in a non-extradition case before the Magistrates' Court, Gross LJ said, at paragraph 20:

> "It is essential that parties to proceedings in the magistrates' court should proceed on the basis of a need to get matters right first time; any suggestion of a culture readily permitting an opportunity to correct failures of preparation should be firmly dispelled."

84. At paragraph 21, Gross LJ said:

> "A necessary corollary of exhorting robust case management from the magistracy and District Bench is that appellate courts should be slow to interfere with case management decisions which have endeavoured to give effect to the approach outlined above. In any event, the grant or refusal of an adjournment is a paradigm example of a discretionary case management decision where an appeal ought only to succeed on well-recognised but limited grounds (for example, error of principle, error of law or where the decision can properly be characterised as plainly wrong)."

85. In order to persuade the Court that a District Judge was wrong to decline to grant an adjournment, it is not sufficient to persuade the members of this Court that they would have exercised the relevant discretions differently. Rather, as Ouseley J said in **Slavik**, at paragraph 19:

> "A decision refusing an adjournment can only be challenged if it is an unreasonable decision, so unreasonable that no District Judge, properly directing himself in law, could reach it or if it has been reached on wrong principles or plainly did not take into account a material consideration."

86. In addition, the impugned decision of the District Judge on 22 November 2021 was a decision to decline to provide an extension of time for an **Aranyosi** response. Paragraph 97 of **Aranyosi** (above) makes clear that the executing Judicial Authority may fix a time limit for a response, and that the time limit must be adjusted to the particular case, so as to allow the receiving Judicial Authority the time required to collect the information, and should also take account of the need to observe the time limits set out in article 17 of the Framework Decision. In my judgement, the same approach applies to an appeal against this decision as applies to a decision to adjourn. The decision can only be challenged if the conditions set out in **Slavik**, above, are met. The material considerations include those set out in paragraph 97 of **Aranyosi**.

87. In the course of oral argument, Mr Hines QC confirmed that the Appellant was not contending that the District Judge had applied the wrong principles, or had failed to take into account a material consideration. Rather, the Appellant submitted that her

decision was so unreasonable that no District Judge, properly directing herself in law, could have reached it.

The chronology of events

88. I have already summarised the key events leading up to the decision not to grant the Appellant any further time for the **Aranyosi** response. However, it is necessary at this stage to set out the chronology in greater detail.

89. On 3 August 2020, the Second Respondent was arrested.

90. On 4 August 2020, the Second Respondent had his first hearing.

91. On 1 September 2020, District Judge Ezzat ordered that the Appellant serve a response to the Second Respondent's evidence by 23 October 2020.

92. On 2 October 2020, the Second Respondent served a report (dated 18 September 2020) by prisons expert Professor Tsitselikis which forecast that he would be detained at Thessaloniki prison and which described the widespread problems there. Based on the (then) contemporaneous occupancy levels at Thessaloniki, Prof. Tsitselikis calculated that the Second Respondent would receive about 2.38 sqm of personal space in multi-occupancy accommodation.

93. The deadline for service of the Appellant's Article 3 response was 23 October 2020. The Appellant missed this deadline (first court deadline missed).

94. On 3 November 2020, the Appellant applied for first time to adjourn. This application was granted on 9 November 2020 (first adjournment), and the Appellant was directed to serve its Article 3 response by 14 December 2020. This did not happen (second court deadline missed) and no application for additional time was made.

95. On 27 January 2021, the Second Respondent had his second extradition hearing. The Appellant applied for an adjournment. This was granted (second adjournment) and the Appellant was directed to serve evidence or an assurance by 24 February 2021

96. By 24 February 2021, the Appellant did not provide anything within the time allotted by the court (third court deadline missed).

97. On 10 March 2021, the CPS received information from the Greek Ministry of Citizen Protection which confirmed that at Nigrita and Diavata prisons, prisoners received less than 3 sqm of personal space (at that stage, there was a possibility that the Second Respondent might be sent to Nigrita prison). This was served on 27 March 2021. The District Judge found that this was the latest date by which the Appellant was actively on notice about the clear need for an assurance.

98. On 8 and 20 April 2021, respectively, the First and Third Respondents were arrested.

99. On 27 April 2021, at the Second Respondent's third extradition hearing, the Appellant conceded that an assurance would be required in relation to personal space at Diavata prison. Other issues relevant to Article 3 remained in dispute (i.e., inter-prisoner violence and other material conditions). The Appellant requested another adjournment of the extradition hearing to obtain personal space assurances which 'will be

forthcoming'. The application was refused, but the hearing had to be adjourned owing to technical problems (the third adjournment). Having adjourned the hearing, the Judge vacated another case from the list in order to secure a re-listing of this matter in June. The Appellant was directed to serve its assurances by 16 May 2021.

100. On 11 May 2021, the Appellant served evidence in the First Respondent's case which replicated the content of the evidence provided on 10 March 2021 in the Second Respondent's case.

101. On 16 May 2021, the Appellant missed the next deadline to serve its assurances (the fourth court deadline missed).

102. On 25 May 2021, the Appellant applied for further time to provide assurances and this was granted until 28 May 2021.

103. On 28 May 2021, the Appellant again failed to provide the promised assurances (fifth court deadline missed). The Appellant indicated that it should be able to provide assurances by 8 June, but this deadline was missed as well.

104. On 14 June 2021, the Appellant applied to adjourn the Second Respondent's (fourth) extradition hearing (the fourth application to adjourn) to enable the First and Third Respondents' cases to be joined and for 4 further weeks to provide assurances. The application was granted by District Judge Ezzat at a hearing on 16 June (over the Respondents' objection). From this point onwards, the three cases were joined.

105. On 17 June 2021, the First Respondent's legal representatives served a report from Professor Tsitselikis concerning Diavata prison.

106. On 12 July 2021, the Appellant again failed to provide assurances (the sixth court deadline missed).

107. On 19 July 2021, at a case management hearing, a three-day extradition hearing was fixed for 20 October 2021. The District Judge ordered that assurances were to be served by the Appellant by 6 September 2021.

108. On 6 September 2021, the Appellant did not provide assurances (seventh court deadline missed).

109. On 20 October 2021, day 1 of the extradition hearing, the Appellant applied to vacate the listing to permit the Greek authorities further time to provide assurances (the fifth application to adjourn). It was asserted without evidence that the Appellant had 'engaged' with the CPS requests for assurances. The Appellant declined to provide details of those requests (the District Judge observed that she was 'not entitled' to call for them). The Respondents opposed the application to adjourn. The Judge declined to permit the CPS further time to seek the assurance, and instead made the **Aranyosi** request.

110. On 22 October 2021, the **Aranyosi** request was transmitted to the Appellant via the CPS. It concerned only personal space and informed the Appellant that 'this is a Court led enquiry with a strict deadline of 19th November 2021' which was to be dealt with 'as a matter of urgency'.

111. The **Aranyosi** deadline was missed. On 19 November 2021, the last day of the **Aranyosi** deadline, the Appellant served a written application for an extension of time to provide an assurance (the sixth application to adjourn). Three sets of documents were also served, one of which came from the head of Diavata prison dated 11 October 2021 and which reconfirmed that no prisoners were routinely afforded 3 sqm of personal space.

112. It became clear that it would not be possible to hear all of the evidence on all matters during the 3-day hearing, partly because the Respondents were not produced on one day of the hearing. The Court fixed another hearing for 25 January 2022 to deal with other issues.

113. On day 3, 22 November 2021, the Appellant made a further application for additional time to obtain assurances. This was on the basis that a document had been received in the **Sula** case, which the CPS believed (mistakenly as it turned out) contained an assurance equivalent to the ones that were being sought in the Respondents' cases. Counsel for the Appellants could not provide a date by which the assurances in the Respondents' cases would be available.

114. The Respondents abandoned all their grounds of opposition to extradition, apart from the Article 3 personal space ground, thereby rendering the further hearing unnecessary.

115. On 22 November 2021, the District Judge discharged the arrest warrants in respect of each of the Respondents.

116. It should be emphasised that it has never been suggested that the delays and late provision of assurances were the result of bad faith or tactical advantage on the part of the Greek authorities.

Were the linked decisions to refuse the adjournment on 22 November 2022 and to refuse to grant the Appellant additional time to provide their assurances unreasonable?

117. In my judgement, the answer is plainly "no". As I have said, the issue is whether the decisions were so unreasonable that no reasonable District Judge, properly directing herself in law, could have taken them. It is accepted by the Appellant that the District Judge took account of the right considerations and did not make any mistakes of legal principle.

118. As I have said, the District Judge had a broad discretion. The CPR recognise the importance of dealing with cases expeditiously (CPR 1.1(e)) and the special objective which applies to extradition cases emphasises the importance of dealing with extradition cases swiftly. The obligation to deal with extradition cases expeditiously is also stated in CPD 50A.1, and reference is also made there to the requirement that the District Judge makes requests for further information from the Judicial Authority "in good time". Further adjournment and further delays would have been prejudicial to other court users.

119. The chronology of events set out above makes clear that the District Judge did not act precipitately in refusing to grant a further adjournment and extension of time. Rather,

both of the District Judges who dealt with these cases gave the Appellant multiple chances, described above, to provide the relevant assurances. By November 2021, there had already been five successful applications to adjourn in the Second Respondent's case. He had already been in custody for 15 months and the other two Respondents had been in custody for about seven months. Some eight months previously, the Appellant had conceded that assurances were required, or the extraditions could not go ahead.

120. As the District Judge pointed out, the assurances that were being sought were not complicated. In October 2021, even though by that time seven court deadlines had been missed by the Appellant, the District Judge did not proceed to discharge. Rather, she gave the Appellant another opportunity to provide the assurances, by making a request via the **Aranyosi** procedure. The time-scale which she provided for a response, nearly a month, cannot be regarded as excessively short. Paragraph 95 of **Aranyosi** requires that the request to the Judicial Authority of the issuing member state must state the necessary information be provided "as a matter of urgency". Paragraph 97 requires the District Judge to take account of the time limits set out in article 17 of the Framework Decision, which are short. Article 17 envisages that the whole extradition process will take no more than 90 days. The extradition process in the case of the Respondents had lasted very substantially more than that. The Court of Justice in **Aranyosi** expressly recognised that the time for a response to an Aranyosi request should not be extended indefinitely. The Court said that the executing Judicial Authority may have to discharge persons whose extradition is sought if the requesting Judicial Authority does not provide information to discount the risk of a breach of Article 3 within a reasonable time (see, judgment, paragraph 104, above).

121. The Judicial Authority was warned of the potential consequences if it did not respond within the deadline imposed by the District Judge. On 20 October 2021, she made clear that unless there was an extremely good reason for non-compliance, she would be unlikely to grant further time.

122. No explanation was provided to the District Judge for the delays, and the Appellant did not give any indication as to when the assurances would be provided. There was no indication as to how much longer the Respondents might have to remain in custody awaiting extradition. In effect, the Appellant was seeking an indefinite extension. The fact that a further hearing to deal with other matters had been listed for January 2022 was beside the point, because if the Respondents had to be discharged because of the Article 3 personal space issue, then the other matters fell away.

123. The fact that the party seeking the further adjournment and extension of time was a Judicial Authority does not mean that the District Judge had to accede to the requests. There is a public interest in court orders being obeyed, and this applies no less so where the order has been imposed against a friendly foreign state which is expected to comply with its international treaty obligations. As Gross LJ put it in **M and another v Preliminary Investigating Tribunal of Napoli, Italy** [2018] EWHC 1808 (Admin), at paragraph 74 '[t]he requesting state must be expected to get its tackle in order'. In **Romania v Iancu**, at paragraph 26, Chamberlain J said that "the need for procedural rigour applies just as much to extradition cases as to other cases before the magistrates."

124. In **Alexander v Public Prosecutor's Office, Marseille District Court of First Instance** [2017] EWHC 1392 (Admin), [2018] QB 408, Irwin LJ said, at paragraph 77:

> "At all stages, the principal responsibility for the provision of information required by the EAW lies on the state requesting extradition. That responsibility is not transferred to the English court considering extradition. Nothing in the Framework Decision or the Act carries any different implication."

125. In **India v Dhir**, the Divisional Court upheld a refusal of the Chief Magistrate to adjourn to consider an assurance provided by the requesting Judicial Authority, even though the assurance had been provided on the day that she was to hand down her reserved judgment. Another case in which a Divisional Court refused to grant the judicial authority additional time to provide an **Aranyosi** response is **Mohammed v Portugal** [2018] EWHC 225 (Admin).

126. On behalf of the Appellant, Mr Hines QC suggested that the District Judge should have taken no account of events prior to the issuance of the Aranyosi request, but I see no reason why she should not have done so. It would have been wholly artificial to ignore the history of the matter prior to October 2021. He also pointed out that the Greek authorities had not ignored the extradition proceedings and had provided the UK court with information during the process. However, this misses the point: the information that was provided to the District Judge up to 22 November 2021 by the Appellant and the Greek authorities was all to the effect that the Respondents would not have at least 3 sqm of personal space if they were extradited to Greece. What the Appellant had failed to do in a timely manner was to provide any assurances that the Respondents' Article 3 personal space rights would be respected if they were extradited.

127. Mr Hines QC also submitted that the District Judge had fundamentally misunderstood the **Aranyosi** procedure because she referred to it as being "court-to-court, judge-to-judge" when in fact the **Aranyosi** request was made to the Judicial Authority, which is the Public Prosecutor's office, and which is not directly responsible for prison conditions in Greece. This criticism places too much reliance on a passing comment in the District Judge's ruling. She was well aware of the recipient of the Aranyosi request, as she drafted the request, and she was also well aware that neither the Public Prosecutor, nor, for that matter, the Greek Court, was directly responsible for prison conditions. It will have been obvious to her that, before an assurance could be made, the Judicial Authority will have had to liaise with the appropriate Greek government department, the Ministry of Citizen Protection. That Ministry had already been involved in the proceedings, and had been the source of the information about prison conditions that was supplied on 10 March and 11 October 2021.

128. Taking all of these matters into account, the District Judge in the present case was well within her discretion to decide to refuse any further adjournments and to decline to extend time for an answer to the **Aranyosi** request. The offences (or, in the Second Respondent's case, the alleged offence) for which the Respondents were being sought are serious, and this was a relevant consideration for the District Judge when deciding whether or not to grant an adjournment and extension of time. She took this into account, but she was entitled nonetheless to reach the decision that she reached.

129. Finally, and for obvious reasons, it would be wrong to take account of the additional evidence that the Appellant now seeks to rely upon in the form of the statement of Ms Bawla plus exhibits, when deciding whether the District Judge was wrong to refuse to grant an adjournment and extension of time on 22 November 2021. This additional evidence was not made available at that time and so she cannot be criticised for failing to take it into account. By the same token, the fact that, in the event, the Appellant provided assurances on 26 November 2021 (following a yet further request from the CPS on 25 November 2021), four days after the Respondents were discharged, is immaterial. The District Judge had no way of knowing that this would happen.

(4) Should the Divisional Court admit the assurances that have now been provided by the Appellant?

The law

130. EA 2003, section 29(2) provides that the High Court may allow an appeal against discharge if, inter alia, the conditions in section 29(4) are satisfied. These are that:

i) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

ii) the issue or evidence would have resulted in the judge deciding the relevant question differently;

iii) if he had decided the question in that way, he would not have been required to order the person's discharge.

131. The question whether an assurance should be admitted by the appellate court has recently been considered in two cases, **Government of United States of America v Assange** [2021] EWHC 3313 (Admin); [2022] 4 WLR 11 and **Sula**. It is sufficient to set out the relevant passage from the **Sula** judgment, as this helpfully summarises the views expressed by the Divisional Court (the Lord Chief Justice and Holroyde LJ) in **Assange**. In **Sula**, William Davis LJ and Julian Knowles J said, at paragraphs 35-41:

> "35. The question of assurances, and in particular those served in connection with appellate extradition proceedings, was recently considered by this Court presided over by the Lord Chief Justice in **Government of the United States of America v Assange** [2021] EWHC 3313 (Admin). In that well-known case the district judge had discharged Mr Assange because of the risk of suicide she found would exist if he were extradited to the United States. On appeal, the United States offered various assurances relating to the conditions in which Mr Assange would be held if extradited, and other matters.
>
> 36. Mr Assange argued the Court should not accept the assurances. Among the arguments advanced on his behalf, it was submitted that by offering the assurances at a late stage the United States was trying to change its case, and that it

was too late to do so. It was also said that the criteria for the receipt of fresh evidence on appeal established in **Municipal Court of Szombathely v Fenyvesi** [2009] 4 All ER 324 had not been met. Mr Assange relied on the statement in **Fenyvesi** at [35] that the appeal court will not readily admit fresh evidence which should have been adduced before the lower court and which is tendered to try to repair holes which should have been plugged before that court.

37. At [39]-[42] of its judgment the Court said this:

"39. A diplomatic note or assurance letter is not "evidence" in the sense contemplated by section 106(5)(a) of the 2003 Act: it is neither a statement going to prove the existence of a past fact, nor a statement of expert opinion on a relevant matter. Rather, it is a statement about the intentions of the requesting state as to its future conduct: see USA v Giese [2016] 4 WLR 10 at paragraph [14]. For the purposes of section 106(5), an offer of an assurance at the appeal stage is an "issue": see **India v Chawla** [2018] EWHC 1050 (Admin) at [31].

40. **In India v Dhir** [2020] EWHC 200 (Admin), a Part 2 case in which the issues related to article 3 of the Convention, at paragraphs [36] and [39] the court said –

'36. The court may consider undertakings or assurances at various stages of the proceedings, including on appeal, and the court may consider a later assurance even if an earlier undertaking was held to be defective: see **Dzgoev v Russia** [2017] EWHC 735 at paragraph 68 and 87 and **Giese v USA (no 4).**

...

39. Where a real risk of inhuman and degrading treatment is established, it is not appropriate to discharge the requested person but to enable the requesting state 'to satisfy the court that the risk can be discounted' by providing assurances, see **Georgiev v Bulgaria** [2018] EWHC 359 (Admin) at paragraph 8(ix). If such an assurance cannot be provided within a reasonable time it may then be necessary to order the discharge of the requested person, see ... **India v Chawla** at paragraph 47.'

41. We respectfully agree. Other cases relied on by Mr Assange including **India v Ashley** [2014] EWHC 3505 (Admin) at paragraphs [42] and [43], do not provide support for the argument to the contrary. In **Romania v Iancu** [2021] EWHC 1107 (Admin) further information and a related assurance had been submitted outside a time limit

> and after the conclusion of the hearing. The District Judge refused to admit it when to do so would result in a further hearing and in further delay to proceedings. As Chamberlain J said at paragraph [22], "it is inherent in the concept of a time limit that failure to comply with it may have consequences". The present case is different.
>
> 42. In our view, a court hearing an extradition case, whether at first instance or on appeal, has the power to receive and consider assurances whenever they are offered by a requesting state. It is necessary to examine the reasons why the assurances have been offered at a late stage and to consider the practicability or otherwise of the requesting state having put them forward earlier. It is also necessary to consider whether the requesting state has delayed the offer of assurances for tactical reasons or has acted in bad faith: if it has, that may be a factor which affects the court's decision whether to receive the assurances. If, however, a court were to refuse to entertain an offer of assurances solely on the ground that the assurances had been offered at a late stage, the result might be a windfall to an alleged or convicted criminal, which would defeat the public interest in extradition. Moreover, as Mr Lewis QC pointed out on behalf of the USA, a refusal to accept the assurances in this case, on the ground that they had been offered too late, would be likely to lead only to delay and duplication of proceedings: if the appeal were dismissed on that basis, it would be open to the USA to make a fresh request for extradition and to put forward from the outset the assurances now offered in this appeal, subject, of course, to properly available abuse arguments."
>
> …

40. Applying the approach in **Assange**, we have no doubt that the Court should receive and take into account the assurance from Greece, notwithstanding its lateness. It should be made clear that non-compliance with deadlines set by the courts of this country for the receipt of material from issuing judicial authorities is to be deprecated. Co-operation in extradition matters works both ways; just as our extradition partners rightly expect co-operation from courts here in the processing of their EAWs and extradition requests, so our courts should be able to rely upon requesting authorities to supply material in accordance with any deadlines which are set.

41. That said, there is no question of Greece having acted in bad faith or having delayed serving the assurance for tactical reasons. Moreover, little would be gained by refusing to accept the assurance, for essentially the reasons given by the Court in Assange, a point which Mr Perry candidly accepted. Were we

> to do so, and the Appellant discharged, then it would be open to the Greek authorities to begin fresh proceedings for the serious drugs offence with which the Appellant is charged, with all of the delay and expense that would entail (and perhaps with the Appellant again remanded in custody, as he is presently). In our view that would not be in the interests of justice."

132. The principles as identified in **Assange** and **Sula** can be summarised as follows:

(1) The High Court may admit an assurance by the Receiving State, even if it is offered for the first time at the appeal stage;

(2) Such an assurance is not fresh evidence. It is not evidence at all. Rather, it is an "issue" for the purposes of section 29(4);

(3) This means that the assurance should not be admitted unless it would have resulted in the District Judge deciding the relevant question differently, if it had been placed before the District Judge;

(4) However, the appellate court is not bound to admit the assurance, even if it would or might have resulted in the District Judge deciding the relevant question differently. There is a prior question. This is whether the appellate court should, in its discretion, be prepared to admit the assurance.

(5) In this regard, the Court must examine the reasons why the assurances have been offered at a late stage and consider the practicability or otherwise of the Requesting State having put them forward earlier. It is also necessary to consider whether the Requesting State has delayed the offer of assurances for tactical reasons or has acted in bad faith.

(6) If the requested assurance has not been provided within a reasonable time, and was supplied outside the time limit laid down for its supply, this may be a reason for refusing to admit the assurance on appeal.

Should the Court take account of the fresh evidence in Ms Bawla's statement, plus exhibits?

133. On behalf of the Respondent, Mr Summers QC submitted that the Court should decline to admit Ms Bawla's evidence because it does not pass the test for fresh evidence that is set out in **Fenyvesi**. He submitted that the evidence could have been tendered to the lower court, and there is no good reason why this did not happen.

134. In my judgement, this evidence should be admitted. The **Fenyevesi** test does not apply to the question of the admissibility of the evidence of Ms Bawla. An assurance is not evidence: it is an issue in the appeal. For obvious reasons, the question whether the assurances should be admitted on appeal did not arise in the proceedings before the District Judge. It arose for the first time in the appeal. Evidence which is relevant to the exercise of the court's discretion as to whether to admit the assurances should be admitted and considered by the appellate court. Whilst it is true that the evidence of Ms Bawla, being concerned with the dealings between the CPS and the Greek authorities in relation to these cases, would also have been relevant to the

District Judge's decision whether to adjourn and to grant an extension of time for the Aranyosi response, had the evidence been placed before the District Judge, the fact remains that it is also relevant to the Divisional Court's decision whether to admit the assurances.

Should the assurances be admitted?

135. I take the view that, in the circumstances of these cases, the assurances should not be admitted. The Appellant has known since 27 April 2021, at the latest, that the state of the evidence relating to personal space in Diavata prison was such that there would be an Article 3 objection to the Respondents' extradition, unless sufficient assurances were provided by the Greek authorities. As I have described above, the Appellant was given many opportunities to provide the assurances, culminating in a request being made by the District Judge under the **Aranyosi** procedure. For the reasons given in the previous section of this judgment, I have concluded that the District Judge acted reasonably in deciding, on 22 November 2022, not to give the Appellant any further time to provide the promised assurances. Indeed, I consider that she was right to do so.

136. If a Judicial Authority has missed a reasonable and fair deadline for providing assurances at the Magistrates' Court stage, it would generally be wrong in principle, in my view, to permit the Judicial Authority to escape the consequences of its dilatoriness by admitting the assurances at the appeal stage. Otherwise, time limits at the Magistrates' Court stage will count for nothing. There is no reason to suppose, on the basis of the evidence, that it was not practicable for the Appellant to provide the assurances on or before 22 November 2021. In **Assange,** the Divisional Court expressly approved the proposition that if an assurance cannot be provided within a reasonable time it may then be necessary to order the discharge of the Requested Person. The Divisional Court also approved the observation of Chamberlain J in **Romania v Iancu**, that "it is inherent in the concept of a time limit that failure to comply with it may have consequences".

137. The position in the present case is different from the position in **Assange** or **Sula**.

138. In **Assange**, at paragraph 41, the Divisional Court said that it was not a case in which there had been a missed time limit. In **Assange**, at the Magistrates' Court stage, there had been no suggestion of an assurance from the U.S. authorities, and no **Aranyosi** request was made by the District Judge. The possibility of an assurance arose for the first time at the appellate stage. The U.S. authorities had not missed any deadlines relating to assurances. At paragraph 43, the Divisional Court made clear that the U.S Government could not be criticised for failing to offer contingent assurances to meet every possible combination of outcomes in the case. The Court said that, "A requesting state should not be forced to approach the extradition hearing on the basis that its primary arguments will necessarily fail." In the present case, in contrast, the Appellant was well aware, from 27 April 2021, that its primary argument to the effect that conditions at Diavata prison were consistent with the personal space requirements of Article 3, would necessarily fail.

139. In **Sula**, at the Magistrates' Court stage, the Greek authorities had not offered an assurance, because it was their position that the evidence showed that there was no risk to the Requested Person's Article 3 personal space rights. The District Judge

accepted the Greek Judicial Authority's submission in this regard. As a result, the appeal was brought by Mr Sula against the order for his extradition. The position changed once the appeal commenced. It then became clear that concessions made by the Greek authorities in the present case meant that the Respondent Judicial Authority in Sula (the same Judicial Authority as in the present cases) could no longer argue that conditions at Diavata prison complied with the minimum personal space requirements of Article 3. It was for that reason that the question of an assurance only arose for the first time in **Sula** at the appeal stage, and the High Court made a request for an assurance under the **Aranyosi** procedure (see judgment, at paragraphs 16-27).

140. In the exercise of the Divisional Court's discretion in the present cases, it might have been different if the evidence of Ms Bawla had brought to light some facts or circumstance which placed the apparent dilatoriness of the Greek authorities in a new light, or which provided a reasonable excuse for the delays at the Magistrates' Court stage. But that is not the case.

141. The statement of Ms Bawla sets out the efforts made by the CPS to secure the assurances and the interactions between the CPS and the Greek authorities. The statement provides more information about the chronology of events than was provided to the District Judge, but it does not contend that the information that was before the District Judge was inaccurate. The key information was before the District Judge. Indeed, the interactions between the CPS and the Greek authorities are of very limited significance. What really matters are the interactions between the CPS and the Greek authorities, on the one hand, and the Magistrates' Court, on the other. In so far as the fresh evidence shows that the Greek authorities were engaged with the process and provided some information about prison conditions to the Magistrates' Court, this is nothing new. The District Judge was well aware of this. Again, in so far as the fresh evidence shows that there was no bad faith or tactical manoeuvring on the part of the Greek authorities, this is nothing new. It was never suggested that there was.

142. One point that has been made in the earlier authorities is that it may be appropriate for the appellate court to admit the assurances because otherwise all concerned will be put to delay and inconvenience, as the only practical consequence will be that the Judicial Authority will issue a new arrest warrant, and will give timely assurances second time around. However, notwithstanding this point, it is clear that the Divisional Court in **Assange** accepted that there would be cases in which the appropriate course of action for the appellate court will be to refuse to accept the assurances because of delays at the Magistrates' Court stage. Also, in the present case, Mr Summers QC has indicated that his clients will argue that extradition on the basis of fresh arrest warrants would be an abuse of process. Regardless of the strength of that argument (upon which I express no view), the fact remains that to admit the assurances at the appellate stage in relation to the current arrest warrants would deprive the Respondents of the opportunity to advance that argument in fresh proceedings.

143. For these reasons, the Divisional Court should not admit the assurances. The inevitable consequence of this is that the Appellant's appeal must fail. It is common ground that, in the absence of sufficient assurances about personal space, the arrest warrants must be discharged.

(5) Are the assurances adequate and reliable?

144. On the basis that the assurances are not admitted, these questions do not require determination, and I express no views upon them.

(6) In light of the answers to the above questions, should the appeal succeed or be dismissed?

145. In my judgement, for these reasons, the appeal should be dismissed. The decision of the District Judge to dismiss these arrest warrants should be upheld.

146. It follows that the question as to the extent of the matters that the District Judge may deal with on remission does not arise.

Lord Justice Popplewell

147. I agree.